



Affidavit #1 of Nicholas Bala
Sworn this 15th day of July, 2010
No. S-097767
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF:

THE *CONSTITUTIONAL QUESTION ACT*, R.S.B.C. 1986, C. 68

AND IN THE MATTER OF:

THE *CANADIAN CHARTER OF RIGHTS AND FREEDOMS*

AND IN THE MATTER OF:

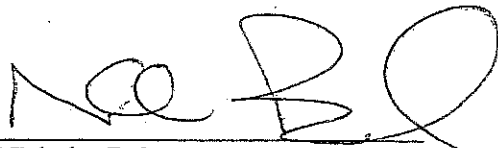
A REFERENCE BY THE LIEUTENANT GOVERNOR IN COUNCIL SET OUT IN ORDER
IN COUNCIL NO. 533 DATED OCTOBER 22, 2009 CONCERNING THE
CONSTITUTIONALITY OF S. 293 OF THE *CRIMINAL CODE OF CANADA*,
R.S.C. 1985, C. C-46

AFFIDAVIT

I, Nicholas Bala, of [address], Canada, make oath and say as follows:

1. I am a law professor at Queen's University, and as such have personal knowledge of the facts and matters hereinafter deposed to, save and except where stated to be made upon information and belief, and where so stated, I verily believe them to be true.
2. Attached to this affidavit as Exhibit "A" is a true copy of my expert opinion dated July 15, 2010. It contains my honestly held opinions.

SWORN BEFORE ME at the City of)
 Vancouver, in the Province of British)
 Columbia, this 15th day of July, 2010.)
 _____)
 A Commissioner for taking Affidavits)
 within British Columbia)



 Nicholas Bala

Brian M. Samuels
Barrister and Solicitor
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**REPORT OF NICHOLAS BALA FOR BRITISH COULMBIA SUPREME COURT
REFERENCE RE S. 293 OF THE CRIMINAL CODE**

SUMMARY: This report discusses the historical, social and legal context of Canada's criminal law prohibiting polygamy, section 293 of the *Criminal Code*. Unlike the recognition of same-sex marriage, which promoted equality and saved government resources, it is my opinion that, if this law is declared unconstitutional, the recognition of polygamy would promote inequality and impose costs on Canadian society. The social reality of polygamy is that it is often exploitative of women and harmful to children, and its practice is contrary to fundamental Canadian values, as reflected in *Charter* jurisprudence. If Canada's prohibition on polygamy is ruled unconstitutional, we would likely have to allow immigration by polygamous families. Western European countries, which allowed immigration by polygamous families in the past, experienced significant social and economic costs as a result, and have ceased to allow such immigration. There is a trend towards restricting or prohibiting polygamy in countries where it has been legal, based on concerns that polygamy is inconsistent with gender equality.

NICHOLAS BALA has been a Professor at the Faculty of Law at Queen's University since 1980. His primary area of research interest is Family and Children's Law, focussing on legal issues related to domestic violence, child welfare, child witnesses, juvenile justice, parental rights and responsibilities after divorce, spousal support obligations and the definition of the family. Much of his research work is interdisciplinary, as he collaborates with other scholars to assess the impact of the law on families and children. He has written or co-authored 15 books and over 135 book chapters and articles in journals of law, psychology, social work and criminology. His work has frequently been cited by all levels of the Canadian court system, including the Supreme Court of Canada. He was an expert witness in cases involving constitutional challenges to section 43 of the *Criminal Code* (*Canadian Foundation for Children, Youth & the Law v. Canada (A.G.)*, 2004 SCC 4, [2004] 1 S.C.R. 76 (corporal punishment of children)) and Ontario's definition of "spouse" (*M v. H*, [1999] 2 S.C.R. 3) and at a number of public inquiries. He is frequently invited to present to professional and academic audiences, and is often interviewed in the media. A curriculum vitae is attached.

PERSONAL CERTIFICATE AND ACKNOWLEDGEMENT: This report has been prepared at the request of Stop Polygamy in Canada, an intervenor in the British Columbia Supreme Court *Reference re the Criminal Code s. 293*. I am aware of my duty under Rule 11 of the *British Columbia Supreme Court Rules* and certify that this report is intended to assist the court and not assume the role of advocate for any party or intervenor and certify that this report is made in conformity with that duty, and that, if called upon to give testimony, I will do so in conformity with that duty.

I wish to acknowledge the research and editorial assistance of Christine Ashbourne, Queen's J.D. Candidate 2011; the views expressed are mine alone.


Nicholas Bala

This is Exhibit "A" referred to in the
affidavit of Nicholas Bala
sworn before me at Vancouver
this 15 day of July, 2010

July 15, 2010


A Commissioner for taking Affidavits
for British Columbia

INTRODUCTION: THE POLYGAMY CONTROVERSY IN CONTEXT

1. This paper sets the current debate about Canada's prohibition of polygamy in an historical, social and legal context. The paper begins by briefly tracing the historical development of the laws governing marriage in Canada. Next, the paper considers polygamy, starting with a brief review of its history and treatment in different societies. The paper then reviews the empirical social science research on polygamy, and concludes with a discussion of the social value of Canada's prohibition on polygamy.

2. The historical and present social reality of polygamy is a relationship of one man and two or more wives—"polygyny" (and in this paper the popularly used term "polygamy" will generally be used to refer to what is technically polygyny). Polygamy (or more accurately polygyny) is a deeply patriarchal institution, and is associated with significant harms to women and children. Although widely practiced over the course of human history and still practiced in a number of countries, the social acceptance and legal recognition of polygamy is shrinking internationally.

3. While there are some women who enter polygamous marriages of their own free will and who report satisfaction in these relationships, there are disturbing reports, especially among Fundamentalist Mormons in North America, of female adolescents being pressured into polygamous relationships. Indeed, everywhere that polygamy is practised, there are concerns about the lack of real choice for women whose husbands decide to take one or more additional wives. Further, there is a growing body of social science research which finds significant harms to women and children in polygamous relationships compared to those in monogamous marriages, as well as negative societal effects.

4. In 2005, legislation was enacted to allow same-sex partners to marry. Polygamy and same-sex marriage, however, are very different. I am advised that a constitutional reference case has been commenced in BC, and that one important issue in that case will be freedom of religion. Freedom of religion and other *Charter*-guaranteed rights, as defined by the Supreme Court of Canada, are not unlimited; Canadian courts have consistently recognized that harm to society and vulnerable individuals, including women and children, justifies imposing limits on fundamental freedoms. Although there were no prosecutions in Canada for polygamy for many years, the criminal law prohibiting polygamy reflects important Canadian values and has had positive practical effects.

5. Some commentators argue that respect for multiculturalism should require Canada to allow immigration by polygamist families from countries where this practice is legal. For a time a number of Western European countries had open immigration policies for polygamist families, but they changed these policies after it became clear that there are serious social problems and costs associated with this family structure for a modern society. These countries are now struggling to deal with the problems of significant polygamous populations while trying to prevent more of this type of immigration. Canada's criminal prohibition on polygamy is an important anchor for our prohibitions on immigration by polygamous families, and serves significant social, educational and symbolic functions. Unlike the recognition of same sex

marriage, which promoted equality, protected the interests of children and saved government resources, polygamy promotes inequality, imposes costs on society, and harms children. Polygamy is inherently an unequal relationship, exploitative of women, and contrary to fundamental Canadian values.

6. I have been asked to provide an opinion on the following topics:
- The evolution of marriage law in Canada;
 - The legal status of polygamy in Canada;
 - Social science studies in polygamy;
 - Canadian values as reflected in freedom of religion jurisprudence;
 - Polygamy, multiculturalism, and immigration; and
 - Protection of women and children in polygamous families.

THE EVOLUTION OF MARRIAGE LAW IN CANADA

The Religious Heritage of Canadian Marriage Law

7. Marriage is a very old social institution, as old as civilization itself. In most ancient societies, rules and laws about marriage were intertwined with religious texts, beliefs and practices. The English law of marriage, which was the basis of the law of Canada, had an explicitly Christian foundation. Until the middle of the nineteenth century in England, legal jurisdiction over issues related to marriage was in the Ecclesiastical courts, not the King's Courts.

8. The legal prohibitions in the English common law on marriage to blood relatives and in-laws (rules about consanguinity and affinity), were based on the Old Testament of the Bible, as interpreted by Church law,¹ and for many years this religious code had the force of secular law. While the Old Testament accepts polygamy without critical comment, homosexual acts were condemned, and the notion of same-sex marriage had no place in traditional religious beliefs.²

9. The New Testament of the Bible recognizes the special nature of marriage and the importance of marital love. Although polygamy is not condemned in the New Testament, major Christian faiths came to accept that marriage is to be monogamous, and until quite recently all major faiths and the laws of all countries were premised on the view that marriage is only to be between a man and a woman. More recently some faiths have accepted same-sex marriage, but the issue of the performance of same-sex marriage by religious celebrants remains intensely controversial in some faiths, such as the Anglican Church, and is unequivocally prohibited in the

1 *Leviticus* 18 and 20, as interpreted in Roman Catholic canonical law at the Council of Trent (1563) and Archbishop Parker's Table in the Church of England's Book of Common Prayer.

2 "You shall not lie with a male as with a woman; it is an abomination." *Leviticus* 18:22 (Revised Standard Edition). Like many passages in the Bible, there are differing translations and interpretations of this passage, but it has traditionally been regarded as a condemnation of homosexual acts.

Catholic Church and in Islam.

10. In the 1866 English case of *Hyde v. Hyde*,³ Lord Penzance articulated a definition of marriage that was frequently quoted⁴ in Canada in the recent debates over same-sex marriage:

[M]arriage, as understood in Christendom, may . . . be defined as the voluntary union for life of one man and one woman to the exclusion of all others.⁵

This definition was articulated for legal purposes, but it was unapologetically based on a religious, and explicitly Christian, view of marriage. It is interesting to observe that Lord Penzance actually defined this conception of marriage in the context of a decision about the non-recognition of a potentially polygamous Mormon marriage, though it was frequently cited as establishing the centrality of opposite-sex partners for marriage. Further, it is significant to note that even at the time that it was articulated in 1866, this definition was already out-dated; in 1857, the English Parliament enacted the *Matrimonial Causes Act*,⁶ transferring jurisdiction for family law issues from the Ecclesiastical to the secular courts, and allowing for judicial divorce in narrow circumstances.⁷

11. While Canadian marriage law was historically based on the Christian ecclesiastical law, Canadian law is no longer based on traditional religious precepts. The first deviation of Canadian marriage law from its Christian roots came in 1882, when Parliament enacted a statute to allow an individual to marry a sibling of a deceased spouse, altering the Biblically based common law prohibition on this type of relationship.⁸ In 1990 this gap was widened when Parliament ended the religiously proscribed prohibition on the marriage of cousins.⁹ Most recently, and in by far the most significant departure from the religious basis of marriage law, in 2005 Parliament

3 (1866) L.R. 1 P. & D. 130.

4 "Religion and Marriage", Editorial, *The Globe and Mail* (3 February 2005). See also the trial decision of Pitfield J. in *EGALE Canada Inc. v. Canada (A.G.)*, 2001 BCSC 1365, 19 R.F.L. (5th) 59.

5 *Hyde v. Hyde* (1866), L.R. 1 P.& D. 130 at 133.

6 *Divorce and Matrimonial Causes Act, 1857*, (U.K.), 20 & 21 Vict., c. 85. For a discussion of the controversy over the 1857 English reforms, see e.g. Lawrence Stone, *Road to Divorce: England 1530-1987* (Oxford: Oxford University Press, 1990) and Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society* (Cambridge, UK: Cambridge University Press, 1988).

7 The dates for the introduction of divorce into Canada varied, with New Brunswick allowing for divorce as early as 1758, but divorce being permitted in Ontario only in 1930, and in Quebec and Newfoundland only in 1968. See Craig McKie, *Divorce: Law and the Family in Canada* (Ottawa: Statistics Canada, 1983) at 24-38.

8 See discussion in Robert Leckey, "Profane Matrimony" (2006) 21 C.J.L.S. 1.

9 *Marriage (Prohibited Degrees) Act*, S.C. 1990, c. 46.

permitted two persons of the same sex to marry, as discussed more fully below.¹⁰

Recognizing Same-sex Marriage

12. Participation in homosexual acts, such as anal intercourse between consenting adults, was a criminal offence (sodomy) in Canada until 1969, when then Justice Minister Pierre Trudeau led the effort to remove this offence from the *Criminal Code*. Starting in Quebec in 1977,¹¹ provincial legislatures began to add provisions to their human rights codes prohibiting discrimination on the basis of sexual orientation with regards to such matters as employment. Despite a growing consensus that overt discrimination against gays and lesbians would not be tolerated in Canadian society, in the early 1990s, politicians and judges were unwilling to accord spousal status to same-sex partners.

13. In 1993, in *Layland v. Ontario (Minister of Consumer & Commercial Relations)*,¹² an Ontario court dismissed a *Charter* challenge by a same-sex couple who argued that their constitutional rights had been violated when they were refused a marriage licence. The court ruled that, since the legal definition of “marriage” was a union of “one man and one woman”, it was not discriminatory to preclude same-sex partners from marrying each other. One of the “principal purposes of the institution of marriage”, the court observed, is the procreation and care of children, which cannot be “achieved in a homosexual union”, and it is “this reality that is recognized in the limitation of marriage to persons of the opposite sex”.¹³

14. In 1999, in *M. v. H.*,¹⁴ the Supreme Court held that the failure to permit partners in long-term same-sex relationships to seek “spousal support” at the end of their relationship in the same way as opposite-sex common-law couples constituted discrimination on the basis of sexual orientation. Justice Cory, for the majority of the Court, emphasized the social importance of recognizing same-sex relationships:

The exclusion of same-sex partners from the benefits of [spousal support law] . . . promotes the view that . . . individuals in same-sex relationships . . . are less worthy of recognition and protection. It implies that they are judged to be incapable of forming intimate relationships of economic interdependence as compared to opposite-sex couples,

10 The Civil Marriage Act, S.C. 2005, c. 33.

11 An Act to Amend the Charter of Human Rights and Freedoms, S.Q. 1977, c. 6. Alberta still has not added sexual orientation as a prohibited ground, though the Supreme Court of Canada has “read in” this term to that province’s human rights code: *Vriend v. Alberta*, [1998] 1 S.C.R. 493.

12 (1993), 14 O.R. (3d) 658 (Div. Ct.) [Layland].

13 *Ibid.* at 666.

14 [1999] 2 S.C.R. 3.

without regard to their actual circumstances.¹⁵

15. In response to *M. v. H.*, the federal and provincial governments enacted legislation to give same-sex partners the same recognition as opposite-sex common-law partners.¹⁶ Early in the new millennium, as a result of *Charter*-based challenges brought by gays and lesbians seeking the right to marry, courts in eight provinces and two territories recognized that it is a violation of the *Charter* to deny same-sex partners the right to marry. One of the earliest and most frequently cited decisions on the *Charter*-based right of same-sex partners to marry is the 2003 Ontario Court of Appeal judgment in *Halpern v. Canada (A.G.)*.¹⁷ On the importance of giving same-sex partners the right to marry, the Court of Appeal wrote:

Marriage is . . . one of the most significant forms of personal relationships. For centuries, marriage has been a basic element of social organization in societies around the world. Through the institution of marriage, individuals can publicly express their love and commitment to each other . . . This public recognition and sanction of marital relationships reflect society's approbation of the personal hopes, desires and aspirations that underlie loving, committed conjugal relationships. This can only enhance an individual's sense of self-worth and dignity.¹⁸

16. In the course of these decisions, the courts had to consider what has been the strongest secular concern about same-sex marriage: that it may endanger the family and society. One commentator, for example, argued that there is "danger in taking the country down the path marked out by the court . . . [which] would undermine an institution so essential to the well-being of Canadians."¹⁹ In its 2003 decision in *Halpern* the Ontario Court of Appeal rejected the argument that had been persuasive a decade earlier in *Layland*, and accepted that marriage and the ability to procreate are not inextricably intertwined. Further, it is becoming more common for same-sex couples in Canada to have children, whether conceived to one partner by artificial insemination, adopted by the couple, or born to one partner prior to entering the same-sex relationship. There is now a substantial body of social science literature concerning the impact on children of growing up with same-sex partners (usually lesbians) as custodial parents. Psychological research establishes that concerns that children who are raised in these

15 Ibid. at paras. 73-74.

16 Modernization of Benefits and Obligations Act, S.C. 2000, c. 12.

17 (2003), 65 O.R. (3d) 161 (C.A.) [Halpern].

18 Ibid. at para. 5. The decision was a unanimous ruling by McMurtry C.J.O., MacPherson and Gillese JJ.A.

19 Douglas Allen et al., "Don't kiss off marriage" *The Globe and Mail* (18 June 2003). This statement was signed by a number of Canadian religious leaders, academics and lawyers. For a fuller critique of Canada's recognition of same-sex marriage, see Daniel Cere & Douglas Farrow, *Divorcing Marriage: Unveiling the Dangers in Canada's New Social Experiment* (Montreal: McGill-Queen's Press, 2004) and Monte Neil Stewart, "Judicial Redefinition of Marriage" (2004) 21 *Can. J. Fam. L.* 11.

relationships might be worse off than children raised by opposite-sex parents are unfounded. No significant differences have emerged in emotional or cognitive developmental outcomes, or in terms of mental health between children raised by same-sex couples and opposite-sex couples.²⁰ As discussed below, the research outcome is very different and negative for children raised in polygamous families compared to those raised in monogamous families.

17. In its December 2004 decision in *Reference Re Same-Sex Marriage*,²¹ the Supreme Court of Canada signaled its support for same-sex marriage, noting the importance of the “protection” of the rights already acquired by same-sex partners who had married. There was, however, considerable social and institutional value in the Supreme Court refusing to rule in this reference case that the *Charter* requires recognition of same-sex marriage, and leaving it to Parliament to take responsibility for enacting same-sex marriage legislation. The enactment by Parliament of the *Civil Marriage Act*²² in the summer of 2005 reflected the acknowledgement by a majority of Canada’s federal politicians that same-sex marriage is an important aspect of the recognition of human rights in this country. By 2005, with marriage for opposite-sex partners being increasingly considered a relationship of equals without distinctive gender roles in law, marriage and child-rearing became much less closely intertwined. With the increasing commitment to end discrimination based on sexual orientation, the legal recognition of the right of same-sex partners to marry in Canada was inevitable. Same-sex marriage is now an accepted reality in Canada; in the 2006 census, over 90,000 adults self-identified as living with same-sex partners, of whom about one sixth were married.

18. One of the arguments raised by some of the opponents of same-sex marriage was that this change to the definition of marriage would lead Canada to recognize polygamy. Given the history of marriage and the continued acceptance of polygamy in a number of countries in Asia and Africa, it is understandable that the issue of polygamy would be raised in the course of the same-sex marriage debate. However, polygamy raises very different social and constitutional issues from the recognition of same-sex marriage.

19. It is true that typical same-sex unions differ from traditional opposite-sex marital relationships in some respects; for example, there is a greater likelihood that married opposite-

20 Paul D. Hastings, *Children’s Development of Social Competence Across Family Types* (N.p.: Department of Justice Canada, 2006), online: <http://www.samesexmarriage.ca/docs/Justice_Child_Development.pdf>. The Conservative government refused to allow release of this report; it was only made public after a Freedom of Information request from the author; see “Two gay moms just as good, if not better, for children: study” *Ottawa Citizen* (7 May 2007). See also Judith Stacey & Timothy J. Biblarz, “How Does Sexual Orientation of Parents Matter?” (2001) 66 *American Sociological Review* 159. While there have been some differences in terms of the sexual orientation of children raised in gay and lesbian households, there are very likely genetic explanations for at least some of this difference; further, a substantial majority of children raised by homosexual parents grow up to be heterosexuals.

21 2004 SCC 79, [2004] 3 S.C.R. 698.

22 S.C. 2005, c. 33.

sex spouses will have children than same-sex partners. However, same-sex marriages serve many of the same social, economic and psychological functions as traditional opposite-sex monogamous marriages, and there is no evidence that the legal recognition of these relationships is harmful. Recognition of same-sex marriage has *promoted equality*. In contrast, as discussed below in more detail, there is a significant body of social science research which establishes that polygamy is associated with significant social harms and imposes costs on society; further, gender *inequality* is inherent in this type of relationship.

20. The Canadian *Charter* jurisprudence on same-sex relationships reflects a concern with the promotion of equality, as well as with protecting the interests of society and the welfare of children. Canadian courts were among the first in the world to recognize that restricting marriage to opposite-sex partners is contrary to principles of equality, and our precedents in this the area have received considerable international attention.

THE LEGAL STATUS OF POLYGAMY IN CANADA

A Brief History of Polygamy

21. There is a long social and religious history of polygamy (or more accurately, polygyny). Polygamy was practiced by some of the leading figures in the Old Testament of the Bible, including Abraham, David and Solomon. The Koran also accepted the practice of polygamy as a way to provide care for widows and orphans of men who died in battle:

If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four; but if you fear that you shall not be able to deal justly, then only one. (4:3)

22. Islam permits, but does not require, polygamy, and the Koran also recognizes the challenges of living in a polygamous marriage:

You cannot be equitable in a polygamous relationship, no matter how hard you try. (4:129)

23. In a primitive agrarian or hunting-based society, especially where there was a high male death rate due to war, and economic support and protection were only available to women and children who lived in a male-headed household, polygamy served useful social functions. And in non-mechanized agrarian societies that rely on physical labour, it has potential economic value, at least for the husband, as it tends to result in large families with many children who can be productive agricultural workers. Polygamy was widely practiced, especially in Asia and Africa, but also historically among some of the Aboriginal peoples of North America.

24. Although polygamy was practiced among Jews and early Christians, by the Middle Ages the main branches of Christianity and Judaism rejected polygamy as inconsistent with the ideal

of marriage as a partnership of equals.²³

25. Polygamy was widely practiced among Mormons after the founding of that faith in the first part of the nineteenth century in the United States, but in the latter part of the nineteenth century Congress enacted laws to prohibit this practice. While the Mormon Church rejected polygamy in 1890, some Fundamentalist Mormons²⁴ continue to practice polygamy, and believe that this is a religiously required or preferred practice, at least if they are directed to have a polygamous relationship by a church leader. The American courts, however, have consistently rejected religious freedom and other constitutional claims by Fundamentalist Mormons to challenge the laws criminalizing polygamy. The most recent decisions were made after the United States Supreme Court in *Lawrence v. Texas* ruled laws criminalizing sodomy unconstitutional, clearly indicating that American courts view polygamous marriages as very different from same-sex relationships, not only in social terms but also in constitutional terms.²⁵

Polygamy in an International Context

26. Although there has been a growing international trend to restrict or prohibit polygamy, it is legal in parts of the Middle East, Asia and Africa, where demographic, economic, cultural factors and dominant religious beliefs continue to support its practice. Groups with a high incidence of polygamous marriage include Kuwaitis, Saudi-Arabians, Bedouin Arabs, the Xhosa of South Africa, the Kipogi and Datagal of East Africa, and the Yoruba of West Africa.²⁶ Today,

23 The polygamists in the Old Testament include Abraham, Jacob, David and Solomon. By 420 A.D., Saint Augustine condemned polygamy in *The Good of Marriage* (chapter 15, paragraph 17). However, polygamy continued to be practiced in medieval Christian Europe. In 1563, the Roman Catholic Council of Trent felt it necessary to proclaim: "If anyone says that it is lawful for Christians to have several wives at the same time, and that it is not forbidden by any divine law, let him be anathema."

24 The Mormon Church is more formally called the Church of Jesus Christ of Latter-day Saints, and the Fundamentalist Mormons are also called Fundamentalist Latter-day Saints (FLDS). There are a number of different FLDS groups. The reason that these groups are called "Fundamentalist" is that they have retained belief in the pre-1890 precepts of the Mormon Church regarding polygamy; see discussion in Daphne Bramham, *The Secret Lives of Saints: Child Brides and Lost Boys in Canada's Polygamous Mormon Sect* (Toronto: Random House, 2008).

25 In the 2005 case of *Bronson v. Swensen*, 394 F. Supp. 2d 1329 (D. Utah 2005), Utah's Criminal Code and constitutional provisions prohibiting polygamy were challenged by polygamists on the grounds that these laws violate the plaintiffs' right to free exercise of their religious beliefs under the First Amendment and right to privacy under the Fourteenth Amendment of the American Constitution. The plaintiffs argued that their religion, Fundamentalist Mormonism, requires the practice of polygamy, and they brought the action after one of them was denied a marriage licence on the grounds that he was already married. Justice Stewart referred to the *Lawrence v. Texas*, 539 U.S. 558 (2003) decision, and concluded that, as the United States Supreme Court had carefully delineated the limitations of its ruling, *Lawrence* cannot be used to require Utah to recognize polygamous marriages as legally valid. See also *State v. Holm*, 137 P. 3d 726 (Utah 2006).

26 Salman Elbedour, William M. Bart & Joel M. Hektner, "Scholastic Achievement and Family Marital Structure: Bedouin-Arab Adolescents from Monogamous and Polygamous Families in Israel" (2000) 140 *Journal of Social Psychology* 503. See Cynthia T. Cook, "Polygyny: Did the Africans Get It Right?" (2007) 38 *Journal of Black Studies* 232 for rates of polygamy in different African countries

the vast majority of adherents of Islam do not practice polygamy, and a few predominantly Muslim countries like Tunisia and Turkey have banned polygamy, on the basis of a concern that it treats women as inherently unequal to men.²⁷ Courts in Mauritius²⁸ and India²⁹ have rejected arguments that the bans on polygamy in those countries is a violation of freedom of religion or is discriminatory.

27. In the United States, the incidence of polygamy is unknown, largely due to the legal prohibitions against plural marriage and the consequent secrecy of its practice. It is estimated that between 25,000 to 100,000 people live in polygamous families in the United States.³⁰ The practice of polygamy in North America today is mainly among Fundamentalist Mormon groups,³¹ primarily located in isolated areas in Arizona, Idaho, Texas and Utah, and in Canada in the interior of British Columbia.

28. Over the course of history, polygyny has been the only type of polygamy that has been practiced on a significant basis. Although polyandry (one wife with two husbands) was practiced in a small number of isolated societies, those relationships were sometimes transitory, for example, involving two brothers sharing a wife for a period of time. Polyandry has been very uncommon,³² and has been described as an “ethnological curiosity”.³³ In contemporary China, where the one child policy and female infanticide are causing a shortage of female partners for men, polyandry is not being practiced, though this gender imbalance is producing social stresses and an increase in the sex trade and sexual trafficking.³⁴ Both internationally and in Canada, the social reality is that polygyny is the only form of polygamy that is significantly practiced, and many of the concerns about polygamy are based on the inherent inequality in a relationship

27 For the argument that “polygamy is no longer necessary or applicable to Islam”, see Michele Alexandre, “Big Love: Is Feminist Polygamy an Oxymoron or a True Possibility?” (2007) 18 *Hastings Women’s L.J.* 3.

28 *Bhewa v. Gov’t of Mauritius*, [1991] LRC (Const) 298.

29 *Sarla Mudgal v. Union of India*, A.I.R. 1995 SC 1531.

30 M. Kopala, “Bountiful is a detour on the road to same-sex marriage” *The Ottawa Citizen* (29 January 2005) B6; Maura I. Strassberg, “The Challenge of Post-modern Polygamy: Considering Polyamory” (2003) 31 *Capital U.L. Rev.* 439.

31 Irwin Altman & Joseph Ginat, *Polygamous Families in Contemporary Society* (Cambridge, Mass.: Cambridge University Press, 1996).

32 Alean Al-Krenawi, John R. Graham & Salem Al-Krenawi, “Social Work Practice With Polygamous Families” (1997) 14 *Child and Adolescent Social Work Journal* 445.

33 Cynthia T. Cook, “Polygyny: Did the Africans Get It Right?” (2007) 38 *Journal of Black Studies* 232, for information on rates of polygamy in different African countries.

34 See “Study: China faces 24 million bride shortage by 2020” *CNN* (11 January 2010), online: www.cnn.com; and Nita, “The bad effects of too few women” (7 September 2007), online: www.nitawriter.wordpress.com/2007/09/07/how-bad-it-gets-when-there-is-a-shortage-of-women/.

where one man has two or more wives. The recognition of the importance of monogamy and gender equality, combined with the negative psychological and physical health effects on women and children, help explain why there is a growing international trend to prohibit or restrict polygamy.³⁵

Canada's Prohibition on Polygamy

29. Polygamy has been illegal in Canada since 1892.³⁶ The original polygamy prohibition was enacted in Canada as part of the first *Criminal Code*, with the intent of discouraging immigration by polygamous American Mormon families, who at that time were being actively prosecuted by the United States government under laws which prohibited polygamy in that country. The original statute included a specific reference and prohibition on "Mormon" polygamous marriages, as well as other polygamous relationships. The explicit reference to Mormon polygamous marriage was deleted by Parliament in 1954.³⁷ The present provision in the *Criminal Code*, section 293, prohibits not only participation in a polygamous marriage ceremony, but also makes it an offence to enter into "any form of polygamy" or live in "any kind of conjugal union with more than one person at the same time."

30. There are only two reported convictions in Canada for polygamy, both occurring around 1900 and involving the prosecution of Aboriginal men.³⁸ Prior to the recent Bountiful prosecutions, the last reported attempt at using this provision was in 1937, when it was held by the Ontario Court of Appeal that a man who left his wife and was living in an adulterous relationship was not committing the offence of polygamy.³⁹

31. Section 293 of Canada's current *Criminal Code* criminalizes polygamous unions:⁴⁰

35 The 1992 United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), in its General Recommendation on Equality in Marriage and Family Relations, 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 dependants that such marriages ought to be discouraged and prohibited." According to Article 16, Canada, as a signatory to the CEDAW, has committed itself to "take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations."

36 Committee on Polygamous Issues, *Life in Bountiful: A Report on the Lifestyle of a Polygamous Community* (British Columbia: Ministry of Women's Equality, 1993) at 24.

37 Law Reform Commission of Canada, *Bigamy*, Working Paper No. 42 (Ottawa: Law Reform Commission of Canada, 1985) at 22-23.

38 *R. v. Bear's Shin Bone* (1899), 3 C.C.C. 239 (N.W.T.S.C.); *R. v. Harris* (1906), 11 C.C.C. 254 (Qc. S.C.P.).

39 *R. v. Tolhurst and Wright*, [1937] O.R. 570 (C.A.).

40 R.S.C. 1985, c. C-34.

s. 293(1) Everyone who (a) practises or enters into or in any manner agrees or consents to practise or enter into

(i) any form of polygamy, or

(ii) any kind of conjugal union with more than one person at the same time, whether or not it is by law recognized as a binding form of marriage;

... is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

As made clear by section 293(2), if a person is charged under section 293(1), “no . . . proof of the method by which the alleged relationship was entered into, agreed or consented to is necessary in the indictment or on the trial of the accused.” Thus, either the fact of living in a polygamous relationship, or proof that a polygamous religious ceremony was held, is sufficient for a conviction; there is no need for both.

32. Although the language differs, section 293 of the *Criminal Code* is similar to the criminal provisions governing bigamy in American states such as Utah.⁴¹ In Utah the criminal law prohibiting polygamy refers not only to an individual who is simultaneously married to multiple spouses, but also to a man who is legally married to one woman and “cohabits” with another woman. In *State of Utah v. Green*,⁴² the prosecution was able to secure a conviction against Fundamentalist Mormon Tom Green on four counts of bigamy because it was established that he had a valid marriage to one woman, and was “cohabiting” with four other women as wives, despite the lack of proof of solemnization of these relationships.⁴³ While there are differences in the precise words, section 293 has the same effect in terms of the prohibition of Fundamentalist Mormon polygamy in Canada. It is common practice for Fundamentalist Mormon men to legally marry a first wife, and then have religious ceremonies to take other “celestial wives”; although these later unions are not legal marriages, the resulting relationships are either a “form of polygamy” or a “conjugal [polygamous] union” and are prohibited under section 293.

41 Utah Code Ann. § 76-7-101(1) (2003): “A person is guilty of bigamy when, knowing he has a husband or wife or knowing the other person has a husband or wife, the person purports to marry another person or cohabit with another person.” Unlike some jurisdictions where criminal laws relating to polygamy deal with this practice as an aspect of the offence of “bigamy”, in Canada the *Criminal Code* distinguishes between bigamy and polygamy. Under section 290, a person commits the offence of bigamy when, being married to another person, he (or she) participates in a marriage ceremony with another person. This provision is intended to allow for the prosecution of a person who goes through a marriage ceremony without telling the new spouse that he or she is already married, and is intended to protect against this profound type of deception.

42 99 P.3d 820 (Utah 2004).

43 The concept of “conjugal cohabitation” is well defined in Canadian case law, although the test is multi-factoral: see e.g. *Molodowich v. Penttinen* (1980), 17 R.F.L. (2d) 376 (Ont. Dist. Ct).

33. Section 293 is broadly worded and appears to make it an offence for a Canadian man to go abroad and enter into a polygamous marriage in a jurisdiction where such a marriage is lawful and then returns to Canada. Even if he has only one wife in Canada, as long as the polygamous marriage subsists, it does not matter that not all of the parties are residing in Canada. While a prosecution may be unlikely in this situation, this interpretation of section 293 is supported by statements made in some immigration decisions and is consistent with preventing women and children from living in polygamous marriages in Canada.⁴⁴

Polygamy is Not Adultery or Group Sex

34. Both Muslims and Fundamentalist Mormons are generally very modest in their dress, and very traditional in their attitudes towards gender issues and sex, including strong condemnation of adultery and premarital sex. Polygamy as practiced by Muslims and Fundamentalist Mormons does *not* involve group sex; sexual contact is only between the husband and one wife at a time. It is, however, instructive to consider the laws governing group sex and adultery, which are practices that might, in some ways, be analogized to polygamy, even though the laws governing such practices are very different.

35. In *R. v. Kouri*,⁴⁵ the Quebec Court of Appeal held that the sexual acts performed by those who practice “swinging” (couples exchanging sexual partners) do not constitute acts of “indecentcy” under section 197 of the *Criminal Code*. Justice Rochon stated that the location of the acts is an essential component of the test to determine whether an act is “indecent”, with the result that “[f]or several decades now the State has disclaimed any right to look into the sexual activity of consenting adults in the privacy of their own homes.” He also stated “it appears [. . .] that Canadian society tolerates ‘swinging’ only insofar as these activities take place in private.”⁴⁶ This decision was upheld by the Supreme Court of Canada.⁴⁷

44 See e.g. *Ali v. Canada (Minister of Citizenship and Immigration)* (1998), 154 F.T.R. 285. There may be some situations involving non-residents which should be excluded from section 293 as outside the harm that Parliament intended to address. For example, if a man and two wives who have legally entered into a polygamous marriage in a jurisdiction that allows for this temporarily enter Canada as visitors, a constitutional narrowing of the interpretation of section 293 might be invoked to preclude a prosecution (in the unlikely event that this occurred). The law is intended to protect women and children; there is an argument that if a woman in a polygamous marriage were to be prosecuted, she could claim that a “constitutional exemption” should be read in to protect her. See Peter W. Hogg, *Constitutional Law of Canada*, Student ed. (Toronto: Carswell, 2009) at 892-907 and *R. v. Sharpe*, 2001 SCC 2, [2001] 1 S.C.R. 45, for a discussion of when a criminal law must be construed in a way that minimizes alleged overbreadth. An appropriate remedy might be to read into the law an exclusion from the constitutionally problematic applications of a criminal law, rather than striking it down altogether.

45 [2004] R.J.Q. 2061 (C.A.).

46 *Ibid.* at para. 66.

47 2005 SCC 81, [2005] 3 S.C.R. 789.

36. In *R. v. Labaye*,⁴⁸ the Supreme Court of Canada reversed a conviction for keeping a common bawdy-house in a case involving acts of consensual group sex in a bar that had restricted access. The Court held that consensual group sex is not an act of criminal indecency, nor is a commercial establishment where this occurs to be considered a 'common bawdy house'. Chief Justice McLachlin wrote:

On these facts, no . . . harm . . . was established. The autonomy and liberty of members of the public was not affected by unwanted confrontation with the sexual conduct in question. On the evidence, only those already disposed to this sort of sexual activity were allowed to participate and watch.

Nor was there evidence of . . . the harm of predisposing people to anti-social acts or attitudes. Unlike the [obscene] material at issue in *Butler*, which perpetuated abusive and humiliating stereotypes of women as objects of sexual gratification, there is no evidence of anti-social attitudes toward women . . .

Finally, there is no evidence of . . . physical or psychological harm to persons participating.⁴⁹ [Emphasis added]

Given this approach to group sex, it is clear that it is *not* the sexual activities of polygamists that are a concern, but rather their living, child-bearing and child-rearing arrangements. On the other hand, the discussion in *Labaye* also makes clear that evidence of harm may result in a less tolerant judicial approach.

37. While some Canadian provinces had pre-Confederation laws making adultery or fornication a crime, for well over a century, adultery has not been a crime anywhere in Canada. Some argue that polygamy may be analogized to adultery, and hence should not be a crime. Indeed, Mohamed Elmasry, president of the Canadian Islamic Congress, was recently reported to have claimed that adultery is more damaging than polygamy for children.⁵⁰ He argues that polygamy, at least as prescribed in the Koran, is more "moral" than adultery, since the first wife is expected to consent and because the husband must treat the women and the children of different wives equally. Further, it is argued that polygamy is a more open and honest arrangement than adultery. It would, however, seem that some of the negative effects generally associated with adultery may also apply to polygamy. It is not uncommon for a polygamist husband, Muslim or otherwise, to take a second wife without consulting or notifying his first wife, and even if there is apparent "consent", there may be real concerns that the first wife has been coerced into accepting a subsequent wife.⁵¹ Perhaps most significantly from a policy

48 2005 SCC 80, [2005] 3 S.C.R. 728.

49 Ibid. at 65-67.

50 C. Cobb & B. Harvey, "Canadian Muslim leader defends polygamy" National Post (21 January 2005).

51 S. Yaqub, "Inside the Harem: Polygamy – The Negatives" (20 October 2004), online: BBC Radio 4

perspective, one of the distinguishing features between polygamy and adultery is that, in a polygamous union, children are an expected part of the relationship. Most polygamous marriages have large numbers of children, while children are rarely the product of adulterous relationships. As discussed below, polygyny is associated with poor emotional and educational outcomes for children, and children of different wives are often treated unequally.

38. Adultery is not illegal because it does not threaten the concept of monogamy, but rather exists within it. Polygamy, by contrast, is illegal because it undermines monogamy.⁵² As American courts have stated in their decisions upholding laws prohibiting polygamy, monogamous marriage is a fundamental social institution in their society,⁵³ as it is in Canada and other Western nations. The central offence and harm that Canada's polygamy law addresses does not relate to sexual practices as neither adultery nor group sex are crimes. Rather, it is the fact of *cohabiting with more than two spouses, and in particular in a relationship where there are likely to be children* that has resulted in criminalization. The objective of the law is to prevent women from living in a polygamous domestic arrangement, with its inherent inequality and heightened vulnerability for women, and to prevent children from being born and raised in a family environment that is more likely to be harmful than a monogamous relationship.

Polygamy in Bountiful

39. There is no reliable information on the number of people living in polygamist families in Canada, in part because the relationship is socially marginalized and illegal, and thus there is a reluctance to self-identify as living in a polygamous marriage. However, there is one community, Bountiful located in the interior of British Columbia, where polygamists live openly. The community, founded in 1946 by American Fundamentalist Mormons, is not far from the United States border. It is estimated that about 1,000 people are living in polygamous families in the area of Bountiful. The community has its own Fundamentalist Mormon schools, which receive government funding.

40. In the United States, the coercion of adolescent girls into Fundamentalist Mormon polygamous marriages has resulted in criminal prosecutions and child welfare apprehensions.⁵⁴

<<http://www.bbc.co.uk/religion/religions/islam/beliefs/polygamy.shtml>>. For commentary on how a first wife may be coerced into "consenting" to her husband taking a second wife, see Cheryl Hanna, "Rethinking Consent in a 'Big Love' Way" Mich J. Gender & L. [forthcoming], online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1502760>.

52 Law Reform Commission of Canada, Bigamy, Working Paper No. 42 (Ottawa: Law Reform Commission of Canada, 1985) at 11.

53 See Reynolds v. United States, 98 U.S. 145 (1878); Potter v. Murray City, 760 F.2d 1065 (10th Cir. 1985).

54 In April 2008, child welfare authorities apprehended over 400 children from the FLDS Yearning For Zion ranch in Eldorado, Texas. These authorities concluded that 12 of 439 children who were seized during the raid were underage child brides. Seven of the girls, who were between the ages of 12 and 15, had one or more children. Almost all of the children, however, were returned to the care of their mothers or parents. Twelve men from the

American support groups have been established and litigation commenced to help those who want to leave their polygamous communities.⁵⁵ While many of those leaving these communities are women and children fleeing coerced or abusive polygamous marriages, there are also a large number of adolescent males and young adult men who have left these communities. These “Lost Boys” have found the transition to “the outside” a “jarring, confusing, and lonely experience”.⁵⁶ Most have limited education and employment skills. Some of these young men have left their communities because they do not want to participate in plural marriages, but it is clear that significant numbers of adolescent and young males are effectively being forced to leave Fundamentalist Mormon communities to ensure the “chosen” older men have multiple wives.

41. In 1993 a group of concerned social service professionals in the Bountiful area and former members of the community formed the Committee on Polygamous Issues to examine the practice of polygamy in Bountiful. The report produced by this Committee described the history and religious beliefs of the community, as well as the effects of polygamy on women and children. According to the Committee, for women, the structure and ideology of a Fundamentalist Mormon community in itself is extremely restricting: “Within this determinedly patriarchal community, women’s access to power is limited, first by the role defined for them by the theology and second by the structure of their families.”⁵⁷ According to the Committee, the indoctrinated conformity and lack of personal empowerment for women leads to an underdeveloped sense of self, an inability to understand or exercise choice, and a blurring of personal and collective identity. Further, indoctrination in childhood determines a life course: through their education and upbringing, girls are prepared to be wives in polygamous marriages, and to “be sweet”—that is, accepting of domination by their husbands and their church. The Committee also expressed concern about the limited and doctrinaire nature of the education provided to children in the community. Given the focus on religious instruction in the schools,

ranch were charged with crimes related to their “marriages” to girls under the age of 16. The first one tried was convicted on November 5, 2009 and sentenced to 10 years imprisonment: see “Man from polygamist sect sentenced to 10 years”, CBS 11 (10 November 2009), online: CBS 11 <<http://cbs11tv.com/local/polygamist.polygamy.Eldorado.2.1304710.html>>.

55 See “Woman forms group to help polygamists” Deseret News (16 February 2009), online: Deseret News <<http://www.deseretnews.com/article/705285625/Woman-forms-group-to-help-polygamists.html>>; “‘HOPE’ for those fleeing polygamy” Deseret News (30 May 2006), online: Deseret News <<http://www.deseretnews.com/article/635211017/HOPE-for-those-fleeing-polygamy.html>>; “Program works to help polygamists” Deseret News, (11 July 2009), online: Deseret News <<http://www.deseretnews.com/article/705315909/Program-works-to-help-polygamists.html>>.

56 J. Armstrong, “Making a break from Bountiful” *The Globe and Mail* (9 April 2005) A7; Ted McDonough, “Lost boys found: How the plight of several young men become a legal battle to bring down a polygamist sect” *Salt Lake City Weekly* (23 September 2004), online: <<http://www.rickross.com/reference/polygamy/polygamy250.html>>; Brienne M. Billie, “The ‘Lost Boys’ of Polygamy: Is Emancipation the Answer?” (2008) 12 *J. Gender Race & Just.* 127.

57 Committee on Polygamous Issues, *Life in Bountiful: A Report on the Lifestyle of a Polygamous Community* (British Columbia: Ministry of Women’s Equality, 1993) at 12.

children do not have the benefits of the education received by other children in Canada. Children who left Bountiful and joined the regular school system were far behind other students of the same age.

42. In 1994, Marla Peters completed an M.A. thesis (unpublished) based on a period of participant observation in a Fundamentalist Mormon community in Canada; although not identified, it could only be Bountiful.⁵⁸ Her ethnographic study⁵⁹ provided descriptions similar to those provided by American scholars about the same time in published studies of American Fundamentalist Mormon communities.⁶⁰ For women, entrance to heaven is considered to be based on obedient participation in an assigned plural marriage and the bearing of as many children as possible. If a man displeased religious leaders, he could be excommunicated from the Church, and at least in some Fundamentalist Mormon communities, his wives could be "reassigned" to another member of the faith in good standing. Fundamentalist Mormon family structure is patriarchal, with the husband being viewed as the head of the household, and the one who will determine his wife's entry into heaven; this view of marriage is contrary to widely accepted norms of gender equality in marriage in Canadian society.

43. Fundamentalist Mormons differ from the wider society not only in terms of the practice of polygamy, but also in beliefs and practices of religious observance, deference to religious authority, dress, gender roles, recreation and social activities. Members of these communities reject many of the values and culture of the wider society. Secrecy, according to Peters played a role in preserving the sanctity of the leadership and community. At the same time, leaders withheld information about the community from the outside world. Consequently, members become very dependent on their leaders, which Peters argued may result in an abuse of power: "Having ultimate power, some Fundamentalist leaders exploited their devotees unwittingly or wittingly in order to obtain sexual, material, and/or ego gratification."⁶¹ Further, both women and children were taught to avoid contact and communication with individuals outside the

58 Marla Peters, *Pearls Before Swine: Secrecy in a Mormon Polygynous Community* (M.A. Thesis, University of Alberta Department of Sociology, 1994) [unpublished].

59 In this report "ethnographic research" refers to studies that describe a population and its characteristics, without attempting to directly quantify its characteristics or directly compare that population to another population. In particular, they are studies, usually conducted by anthropologists or sociologists, reporting on polygamous communities or families. They are distinguished from the "empirical social science research" discussed below, which attempts to quantify results, in this context comparing characteristics of polygamous and monogamous families in a particular society.

60 Jessie L. Embry, *Mormon Polygamous Families: Life in the Principle* (Salt Lake City: University of Utah Press, 1987); Irwin Altman, "Challenges and Opportunities of a Transactional World View: Case Study of Contemporary Mormon Polygynous Families" (1993) 21 *American Journal of Community Psychology* 135; Irwin Altman & Joseph Ginat, *Polygamous Families in Contemporary Society* (Cambridge, Mass: Cambridge University Press, 1996).

61 Marla Peters, *Pearls Before Swine: Secrecy in a Mormon Polygynous Community* (M.A. Thesis, University of Alberta Department of Sociology, 1994) [unpublished] at 10.

community. Peters concluded that this secrecy, as well as the “deceptively idyllic accounts” provided by group members throughout the course of her research, prevented her from gaining a full understanding of the community.

44. Since the early 1990s, there has been considerable media attention devoted to the polygamous community in Bountiful, and there is a growing popular literature documenting concerns about adolescent girls being pressured into polygamous marriages, spousal and child abuse, and adolescent males being forced to move out of the community.⁶² Although community leaders and spokespersons have claimed that any form of abuse or maltreatment is rare, ex-members detailed many instances of inappropriate behaviour and child and spousal abuse that occurred in the community.⁶³ Media accounts drew upon the testimonials of ex-members: sexual, spiritual, physical and emotional abuse and neglect of children, the tensions among wives, and the lack of involvement of fathers in raising their children.⁶⁴ Reports also raised gender inequality concerns about how women were treated in polygamous communities.⁶⁵ The reports refer to the patriarchal control exercised over women and children, which one ex-member claimed got to the point where women “lived in fear and couldn’t think anymore.”⁶⁶

45. Editorials in newspapers and advocacy groups have criticized the public funding of the schools in Bountiful. It is claimed that in these schools children are indoctrinated with patriarchal views toward women and the importance of polygamy in attaining spiritual salvation.⁶⁷ These accusations also brought into question the quality of education that children are receiving in Bountiful.

46. A number of media articles have reported that adolescent females are being trafficked

62 See e.g. Daphne Bramham, *The Secret Lives of Saints: Child Brides and Lost Boys in Canada’s Polygamous Mormon Sect* (Toronto: Random House, 2008); M. Zurowski, “Feds reviewing polygamy law” *Calgary Herald* (13 June 1992) A7.

63 Debbie Palmer & Dave Perrin, *Keep Sweet: Children of Polygamy* (Lister, B.C.: Dave’s Press, 1994); T. Egan, “Where polygamy flourishes” *The Spectator* (6 March 1999) D1.

64 Patricia Paddey, “Women speak out against polygamy” *National Post* (25 September 2009); T. Rhodes, “Polygamy is put to the test in a courtroom” *Toronto Star* (11 April 1999) 1; R. Matas, “Polygamy leads to abuse, woman says” *The Globe and Mail* (19 November 2002) A10; M. Milke, “Not-so-sweet memories of marriage” *The Calgary Herald* (16 April 2005) G2.

65 Frank Stirk, “Canadian polygamists let off the hook – again” *Christian Week Canada* (5 March 2002), online: The Hope Organization < http://www.childbrides.org/canada_CACW_pligs_let_off_hook_again.html >.

66 D. Todd, “Splinter Mormons: Reclusive B.C. colony practices polygamy” *The Vancouver Sun* (25 May 1991) D5.

67 C. Elsworth, “Investigation into Bountiful group heats up: Members of polygamous sect defend practices” *Daily Townsend* (4 August 2004) 5; D. Bramham, “Just one big happy family” *Edmonton Journal* (15 August 2004) A14.

between American and Canadian polygamous communities so that they can enter into arranged polygamous marriages,⁶⁸ with articles criticizing Canadian authorities for allowing American female adolescents and women to gain entry to Canada to live in polygamous relationships.⁶⁹

47. Members of the Fundamentalist Mormon community in Bountiful were long reluctant to speak to the media, but in 2005 there was a dramatic change, perhaps because of a split in the leadership of the community or a belief that changing Canadian laws and attitudes towards same-sex marriage may presage changes in attitudes towards polygamy. On April 19, 2005, a group called the Bountiful Women's Society hosted a "Polygamy Summit", inviting the media to a meeting where they defended polygamy as a "freely chosen lifestyle".⁷⁰ They listed such benefits for women in these relationships as the pooling of resources and sharing of housework, as well as the opportunity to marry an older man who had "proven" himself. They also denied reports that women are forced to marry against their will or that adolescents were being pressured to marry. One woman, who identified herself as Leah Barlow, a registered nurse and midwife, was quoted as saying:

We are women that have chosen the Bountiful lifestyle. We love it and we believe in it. We know better than any of you what our culture is like. It's not for everyone, but for us it's the right choice and we wouldn't change it for anything in the world.⁷¹

48. In 2008, McGill Law professor Angela Campbell conducted five days of interviews with twenty women from Bountiful; the women provided relatively positive descriptions of their experiences with polygamy, denying that they or others were coerced into polygamous unions, with the results of the study published in 2009.⁷² The methodology of the Campbell study does not allow for an assessment of how representative the study is of the community, but there is a concern that she may have interviewed women who were most positively disposed to this

68 R. Matas, "Cross-border power struggle hits B.C. colony of polygamists" *The Globe and Mail* (9 September 2002) A5; E. Baron, "Bring on RCMP's probe, wives of Bountiful insist" *The Province* (4 August 2004) A3; "Canadians 'spilling' into Idaho county sparks inquiry" *Daily Press* (2 April 2005) B7; D. Bramham, "House divided against itself" *The Vancouver Sun* (5 March 2005) B2; "Canadian women 'spilling' into Idaho polygamous community" *National Post* (1 April 2005).

69 D. Bramham, "'The polygamy capital of Canada': Welcome to Creston Valley" *Kimberley Dailey Bulletin* (8 April 2005) 2.

70 B. Hutchison, "Bountiful women defend polygamy: 'Silent no more': Wives allow public unprecedented peek at lifestyle" *National Post* (21 April 2005) A3.

71 "Polygamists take the offensive: Public meeting; 'We're not locked in harems,' said one" *Montreal Gazette* (21 April 2005) A10. See also interviews on Dr. Phil television show, online: <www.drphil.com> (24 May 2005).

72 For relative positive descriptions of the experiences of women in Bountiful, see Angela Campbell, "Bountiful needs a critical assessment" *National Post* (26 September 2009); Angela Campbell, "In the name of mothers..." *Globe and Mail* (10 January 2009); and Angela Campbell, "Bountiful Voices" (2009) 47 *Osgoode Hall L.J.* 183.

practice, while those with negative experiences may have been too intimidated to contact the researchers. Some aspects of her research protocol, such as giving interviewees the opportunity to “verify” (or revise) their already anonymized comments were unusual, adding to a concern about the extent to which the results of the study reflect a cross-section of experiences of women in Bountiful with polygamy. The study is not insignificant, for, as Professor Campbell notes: “Their stories are inconsistent with the dominant legal and social narrative about polygamy and its harms for women, and offer an opportunity for developing a more robust and nuanced appreciation of the implications of plural marriage for Bountiful’s wives.” However, it is impossible to know if the women who report positive experiences in the media depict a true representation of the Bountiful community (or even their own lives). At least some of the women who were “speaking out” were likely encouraged to do so by community leaders *because* they were expected to report favourably on polygamy. The accounts of other women from Bountiful, as revealed in the media and in published first person accounts—including those of women who have left the Bountiful community and their polygamous marriages—describe abusive and unhappy marriages, and being coerced into marriage, often at a young age. Further, ethnographic work like the Peters’ thesis presents a very different picture of the lives of women in Bountiful.

49. The size of polygamous families in Bountiful also raises concerns. Each wife is expected to have several children, typically five to ten, and there are several wives for each husband. Although children are surrounded by many sibling role models, and may receive care from more than one maternal figure, they may receive less care and attention as more children are added to the family: both mother and father may become less available, and the bonds between parent and child may weaken. In some cases, all of the wives and children live in a single residence, but it is not uncommon for wives who are less favoured to reside with their children in smaller, less adequate buildings near the husband’s main home. The size of the family ultimately affects economic opportunities: the more wives and children, the fewer resources available for each family member.⁷³ Consequently, it has been documented that many polygamous families in the United States and the United Kingdom receive social assistance.

50. Despite being illegal under the *Criminal Code*, for many years after the founding of the community in 1946, Fundamentalist Mormons in Bountiful lived in polygamous marriages without charges being laid. In the early 1990s, following media reports of incest, sexual abuse, fraud, and trafficking of teenage brides across the Canada-U.S. border, a Royal Canadian Mounted Police (RCMP) investigation was commenced.⁷⁴ Three adult male members of the

73 For an overview of some of the economic consequences associated with polygamy, see Juan R. de Laiglesia & Christian Morrison, OECD Development Centre, Household Structures and Savings: Evidence from Household Surveys, Working Paper No. 267 (2008); Tim Hinks & Simon Davies, “Life Satisfaction in Malawi and the Importance of Relative Consumption, Polygamy and Religion” (2008) 20 *Journal of International Development* 888. For a discussion of the positive economic effects related to a ban on polygamy, see Michèle Tertilt, “Polygyny, Fertility, and Savings” (2005) 113 *Journal of Political Economy* 1341.

74 F. Dawson, “Polygamy unveiled: Group defends plural marriage” *The Province* (16 September 1990) 10; D. Todd, “Splinter Mormons: Reclusive B.C. colony practices polygamy” *The Vancouver Sun* (25 May 1991) D5; D. Todd, “Polygamist convicted of sexually assaulting wife” *The Vancouver Sun* (18 August 1991) B1.

Bountiful community were charged with having sexual relations with underage girls and were convicted of sexual offences. The RCMP also recommended that two of the community's leaders should be charged with polygamy. However, the British Columbia Attorney General's office did not lay polygamy charges at that time as it received a legal opinion that such a prosecution would violate the *Charter of Rights* guarantee of religious freedom.⁷⁵

51. By the early years of the new millennium there was increasing publicity about the practice of polygamy in Bountiful, and some of the women who had left polygamous marriages were demanding government action, especially to protect younger women and girls. The British Columbia government retained two independent prosecutors to determine whether charges should be laid. These two independent prosecutors had concerns about the constitutional issues surrounding such a prosecution, and recommended that a reference case should be brought to resolve these issues.

52. After the second opinion was received, the Attorney General at the time, Wally Oppal (a former superior court judge), retained a third lawyer, Terry Robertson, who decided that charges should be laid. In January 2009, Jim Oler and Winston Blackmore, the male leaders of the two main rival factions of Fundamentalist Mormons in Bountiful, were charged with practising polygamy contrary to section 293 of the *Criminal Code*.⁷⁶ On September 23, 2009, British Columbia Supreme Court Justice Stromberg-Stein ruled in *R. v. Blackmore* that under the provincial legislation which governs the appointment of independent prosecutors, the Attorney General had no authority to direct the appointment of a second (let alone a third) independent prosecutor after the first prosecutor determined that charges should not be laid, and accordingly quashed the charges against the two men.⁷⁷ The decision of Stromberg-Stein J. in *Blackmore* ended the prosecution of these two leaders of the Bountiful polygamous community on procedural grounds, without addressing the constitutionality of the law.

Polygamy in Canada — Muslims

53. While the primary focus of present media concern in Canada is on Fundamentalist Mormon polygamous marriages, there are also some Muslim and North African immigrant polygamist families in Canada. The actual number of these families is unknown; at present it is likely not very large, since immigration by polygamous families to Canada is not legally permitted. There is very little literature available on Muslim polygamists in North America. Media reports indicate that some Muslim imams are performing polygamous marriage ceremonies in this country, and also raise concerns about the exploitation of women in these

75 S. Weatherbe, "The practice of polygamy: A Mormon colony stirs a B.C. controversy" *Macleans*'s (16 August 1993) 16; "B.C. decides it's not illegal to have more than one wife" *The Kitchener-Waterloo Record* (12 June 1993) A3; "Hunting Bountiful: Ending half a century of exploitation" *The Economist* (10 July 2004) 34.

76 Robert Matas & Wendy Stueck, "Polygamy charges in Bountiful" *The Globe and Mail* (7 January 2009).

77 *R. v. Blackmore*, 2009 BCSC 1299, [2009] B.C.J. No. 1890 [Blackmore].

cases, especially of the “first” (older) wife who may find that her husband devotes much more attention to the younger wife or wives.⁷⁸

54. A published study by Hassouneh-Phillips provides a rare glimpse into American Muslim polygamy. As part of a larger study of spousal abuse in American Muslim families, she interviewed 9 Muslim women in the United States who had experienced polygamy, as wives, daughters or siblings of a woman in a polygamous marriage. Most of the women who had experience with polygamy reported that they or their relatives entered polygamous marriages unwillingly, some likening it to “legalized adultery”.⁷⁹ The arrival of new wives in the family was described by the women as a traumatic experience for the senior wives and their children. The issue of inequitable treatment of wives by their husbands was a major concern. Women expected their husbands to be fair, supportive, and to maintain healthy relations between wives, as required by the Koran, but in actuality the husbands treated the wives unequally, and often abusively. However, despite their discomfort and feelings of disempowerment, these women adhered to the cultural value of preserving the family unit (as is the case for Fundamentalist Mormon wives) in order to avoid shame and embarrassment. Hassouneh-Phillips’ research ultimately suggests that although these women did not perceive polygamy itself to be abusive (especially given its religious justification), they believed that their experiences were a *misuse* of it.

SOCIAL SCIENCE STUDIES ON POLYGAMY

(i) Empirical and Ethnographic Research

55. Much of the traditional research on polygamy has been ethnographic (or descriptive). Ethnographic research has real value, and is easier to undertake with subjects who may feel marginalized, like polygamous families in North America. Ethnographic research does,

78 L. Gyulai, “Polygamous union not out in the open” Montreal Gazette (24 July 2009) A3; “GTA’s secret world of polygamy: A Toronto mother describes her ordeal, imam admits he has ‘blessed’ over 30 unions” Toronto Star (24 May 2008) A10; C. Cobb & B. Harvey B, “Canadian Muslim leader defends polygamy” The National Post (21 January 2005).

There are also a few secular “polyamorists” in Canada, though their number is likely very small. Polyamorous relationships involve multiple partners co-residing and do not have a religious basis; they may involve group sex. Unlike traditional polygamous relationships, these residential unions may involve multiple partners of both sexes, at least some of whom may be bi-sexual. These unions appear to be relatively transitory, and much less likely to result in children than traditional polygamous marriages. Further, they are premised on gender equality. It may be that even if section 293 is constitutionality valid, polyamorists can claim a “constitutional exemption” from prosecution, especially if they live without children. See Maura I. Strassberg, “The Challenge of Post-Modern Polygamy: Considering Polyamory” (2003) 31 Capital U.L. Rev. 439; D. Marisa Black, “Beyond Child Bride Polygamy: Polyamory, Unique Familial Constructions, and the Law (2006) 8 J.L. & Fam. Stud. 497.

If polygamy is legally sanctioned in Canada, it is possible that more people will form openly polygamous unions not based on any religion and possibly involving group sex, though the number is likely to remain small.

79 Dena Hassouneh-Phillips, “Polygamy and Wife Abuse: A Qualitative Study of Muslim Women in America” (2001) 22 Health Care for Women International 735 at 740.

however, have limitations, and there is a growing body of empirical social science research on polygamy that offers quantifiable results and arguably, a more objective basis for assessing the effects of polygamy.

56. While some of the quantitative studies have small samples or suffer from methodological limitations, there is a fairly high degree of consistency to the results. All of the reported studies find that women have worse social, psychological or economic outcomes in polygamous marriages than women in monogamous marriages in the same society, though of course not all women in polygamous marriages suffer ill effects from this form of marriage. Most studies also indicate that being raised in a polygamous family has negative effects on children, including higher levels of mortality and emotional problems, and lower educational attainment. While a few studies from the Middle East suggest that being raised in polygamous family may not, in itself, have negative effects on children, even these studies reveal that, to the extent that polygamy is associated with higher levels of poverty (as it invariably is), there are negative consequences for children. There is also some research to suggest that high rates of polygamy have negative economic effects for a country as a whole. The only research that suggests that there might be some benefits to polygyny relates to positive psychological effects on men, and even this research is not consistent, as some research has found negative outcomes for men in polygamous marriages as well.

(ii) Research Effects of Polygyny on Women

57. Although some plural wives report harmonious, “sisterly” relationships, competition between wives (and sometimes their children) is an unfortunate reality in most polygamous families, and it is not uncommon for a dominant wife to physically abuse other wives.⁸⁰ In a published review of research from 69 cultures where polygyny is practised, it is concluded that:

[there are] numerous pragmatic acts of co-operation . . . [and] cases of lifelong friendship among some co-wives. In a careful review of the ethnographic literature, however, we . . . found a recurrent motif of strident co-wife hostility. Invariably first wives tended to react to the arrival of a new co-wife with fear, anger, sadness, and loss . . . whenever the ethnographer discussed co-wife relationships in depth, conflict was reported as present for a majority of relationships in that culture . . . Our findings go against the conventional wisdom that a polygamous family as marital system is as satisfying as any other.⁸¹

80 A particularly chilling Canadian example of one wife being involved in physical violence against another wife is the alleged murder in Kingston, Ontario on June 30, 2009 of an infertile first wife in an immigrant Muslim family by the husband, his second wife and her son, along with the “honour killing” of the man’s three daughters by his second wife. See Tarek Fatah, “To cure honour killings ‘cancer’: Islam is obsessed with women’s sexuality” National Post (25 July 2009).

81 William Jankowiak, Monika Sudakov & Benjamin C. Wilreker, “Co-Wife Conflict and Co-operation” (2005) 44 *Ethnology* 81 at 95-96.

58. Research from the Middle East and Africa reveals that polygamy has negative psychological and health effects on women. Women in polygamous marriages report lower levels of self-esteem and marital satisfaction, and higher levels of depression and spousal abuse than women in monogamous marriages in the same society.⁸² The degree of cooperation or competition and conflict among a husband's co-wives is dependent on a number of factors, both internal and external to the family. Internally, families which are collectively loyal to their household, maintain a non-exploitative co-wife hierarchy, have problem-solving systems that ensure equality (e.g., rotation, incentives), and whose co-wives are close in age are better able to preserve a positive, harmonious family setting. Gwanfogebe, Schumm, Smith and Furrow suggest that senior wives in such co-operative situations are often more satisfied than junior wives, as they are receiving support and assistance for pre-existing responsibilities from the other women.⁸³ Externally, communities that are highly collectivist, stress cooperation and equality, discourage jealousy, and place less value on wealth and physical beauty are the ones where women and children experience fewer negative effects of polygamy. These are societies where the initial marriage is likely to have been arranged, and additional marriages may take place without consent or approval by senior wives, which may leave the first wife feeling disempowered. In societies where there is a high level of gender inequality, women tend to have very little control over reproduction, limited access to financial resources, and minimal influence in the selection of their partner.

59. At least one study from the Middle East also indicates that women in polygamous families report more mother-child problems.⁸⁴ One study from Africa reported that women in polygamous marriages suffer higher rates of sexually transmitted diseases, including HIV infection, though it is unclear whether this is due to transmission from co-wives or higher rates

82 Alean Al-Krenawi, "Women from Polygamous and Monogamous Marriages in an Out-Patient Psychiatric Clinic" (2001) 38 *Transcultural Psychiatry* 187; Alean Al-Krenawi & John R. Graham, "A Comparison of Family Functioning, Life and Marital Satisfaction, and Mental Health of Women in Polygamous and Monogamous Marriages" (2006) 52 *International Journal of Social Psychiatry* 5; Mustafa Ozkan et al., "Mental Health Aspects of Turkish Women from Polygamous Versus Monogamous Families" (2006) 52 *International Journal of Social Psychiatry* 214; Riley Bove & Claudia Vallengia, "Polygyny and Women's Health in sub-Saharan Africa" (2009) 68 *Social Science & Medicine* 21; Stephen Lawoko et al., "Social Inequalities in Intimate Partner Violence: A Study of Women in Kenya" (2007) 22 *Violence and Victims* 773 (finding that women in polygamous marriages are subject to higher rates of intimate partner violence); Masefako Andronica Gumani & Tholene Sodl, "The Experiences of Rural VhaVenda Women Involved in Polygamous Marriages" (2009) 19 *Journal of Psychology in Africa* 199-208; Dominique Meekers & Nadra Franklin, "Women's Perceptions of Polygyny among the Kaguru of Tanzania" (1995) 34 *Ethnology* 315; Victor Agadjanian & Alex Chika Ezech, "Polygyny, Gender Relations, and Reproduction in Ghana" (2000) 31 *Journal of Comparative Family Studies* 427.

83 Philomina N. Gwanfogebe et al., "Polygyny and Marital Life Satisfaction: An Exploratory Study from Rural Cameroon" (1997) 28 *Journal of Comparative Family Studies* 55; S. Madhavan, "Best of Friends and Worst of Enemies: Competition and Collaboration in Polygyny" (2002) 41 *Ethnology* 69.

84 Alean Al-Krenawi & Vered Slonim-Nevo, "The Psychological Profile of Bedouin Arab Women Living in Polygamous and Monogamous Relationships" (2008) 89 *Families in Society* 139.

of infidelity among husbands in polygamous marriages.⁸⁵

(iii) Research of Effects of Polygyny on Men

60. A study based on a survey of people in Malawi indicates that men in polygamous marriages report somewhat greater well-being than men in monogamous marriages, although the same study reports that polygamy is “strongly negative” for women.⁸⁶ Studies from the Middle East, however, indicate that polygamy impairs the mental, familial and marital functioning of husbands,⁸⁷ and more significantly, that it negatively affects the manner in which others regard the children of such marriages.⁸⁸

(iv) Research on Effects of Polygyny on Children

61. There is somewhat less empirical research on the effects of polygamy on children than on adults, but the available literature suggests that children from polygamous families generally have worse outcomes than children from monogamous families in the same societies.

62. Studies from Africa indicate that children in polygamous families generally have poorer health and higher mortality rates than children from monogamous families, perhaps because of larger family size, greater poverty and competition between households for food and resources.⁸⁹ A study of Nigerian adolescents by Owuamanam found that being raised in a polygamous family adversely affects adolescent self-concept, despite having a larger extended family.⁹⁰ Father-child interaction is often inadequate in polygamous homes, leading to lack of identity with significant others and diminished self-concept. Lowered self-concept may be related to competition among half-siblings, who must vie for a place in the family. Owuamanam suggests that as a result of

85 Georges Reniers & Rania Tfaily, “Polygyny and HIV in Malawi” (2008) 19 *Demographic Research* 1811.

86 Tim Hinks & Simon Davies, “Life Satisfaction in Malawi and the Importance of Relative Consumption, Polygamy and Religion” (2008) 20 *Journal of International Development* 888.

87 Alean Al-Krenawi, Vered Slonim-Nevo & John R. Graham, “Polygyny and its Impact on the Psychosocial Well-Being of Husbands” (2006) 37 *Journal of Comparative Family Studies* 173.

88 F. Nazerzadeh Kermani, N. Mohamadi & J. Ebrahimi Kheirabadi, “The Study on Attitude of Tehranian Citizens About Children Social Situation in Polygamous Families” (2008) 4 *Journal of Family Research* 369.

89 Walter Omariba & Michael Boyle, “Family Structure and Child Mortality in Sub-Saharan Africa: Cross-National Effects of Polygyny” (2007) 69 *Journal Marriage & Family* 528; Stephen Obeng Gyimah, “Polygynous Marital Structure and Child Survivorship in sub-Saharan Africa: Some Empirical Evidence from Ghana” (2009) 68 *Social Science & Medicine* 334; Craig Hadley, “Is Polygyny a Risk Factor for Poor Growth Performance Among Tanzanian Agropastoralists” (2005) 126 *American Journal of Physical Anthropology* 471.

90 D.O. Owuamanam, “Adolescents’ Perception of Polygamous Family and its Relationship to Self-concept” (1984) 19 *International Journal of Psychology* 593.

there being fewer children requiring attention, monogamous homes provide more intimate and supportive contact with other adult family members than in polygamous homes, despite being smaller in size. In terms of effects on academic achievement, Cherian found that mean achievement scores were significantly lower for children of polygamous versus monogamous families, speculating that the conflict, anxiety and stress resulting from co-wife and step-sibling rivalry impedes academic progress.⁹¹ Further, children have less contact with their father, and consequently, less security. Despite these negative findings, it must be noted that the available literature is limited to certain groups and countries; outcomes may vary in different cultural environments.

63. Research about Bedouin-Arab children from the Middle East suggests that children raised in polygamous families have lower educational achievement and higher levels of sexual abuse.⁹² Mother's mental health, which is negatively affected by polygamy, and the degree of tension among wives, are associated with behavioural, psychological, interpersonal, academic and adjustment problems in children.⁹³ It is hypothesized that the addition of new wives and children causes a major systemic disruption in the family, providing less stability for children of senior wives, reducing their self-confidence and security, and causing increased anxiety. Furthermore, the addition of a new wife and children to the family produces distance between the children of the senior wives and their father, to the point where children may not recognize him at all. This distance between father and child may be one factor that contributes to children and adolescents from polygamous families appearing to have a greater tendency to experience mental health difficulties than children from monogamous families. The psychological needs of children (particularly children of senior wives) are often neglected in polygamous families, largely due to the poor relationship between children and their father. For adolescents, research suggests that those raised in polygamous families are more likely to demonstrate high levels of interpersonal sensitivity, depression, and paranoid ideation, as well as more problematic family functioning. Physical abuse is also a more common problem in Bedouin-Arab polygamous families than in

91 V.I. Cherian, "Academic Achievement of Children from Monogamous and Polygynous Families" (1990) 130 *Journal of Social Psychology* 117.

92 S. Elbedour et al., "The Scope of Sexual, Physical, and Psychological Abuse in a Bedouin-Arab Community of Female Adolescents: The Interplay of Racism, Urbanization, Polygamy, Family Honor, and the Social Marginalization of Women" (2006) 30 *Child Abuse & Neglect* 577.

93 Alean Al-Krenawi, "Women from Polygamous and Monogamous Marriages in an Out-Patient Psychiatric Clinic" (2001) 38 *Transcultural Psychiatry* 187; Alean Al-Krenawi, John Graham, & Abuelaish Izzeldin, "The Psychosocial Impact of Polygamous Marriages on Palestinian Women" (2001) 34 *Women & Health* 1; Alean Al-Krenawi & Ernie S. Lightman "Learning Achievement, Social Adjustment, and Family Conflict among Bedouin-Arab Children from Polygamous and Monogamous Families" (2000) 140 *Journal of Social Psychology* 345; S. Elbedour, A.J. Onwuegbuzie, C. Caridine & H. Abu-Saad, "The Effect of Polygamous Marital Structure on Behavioral, Emotional, and Academic Adjustment in Children: A Comprehensive Review of the Literature" (2002) 5 *Clinical Child & Family Psychology Review* 255; and Rachel Lev-Wiesel & Alean Al-Krenawi, "Perception of Family among Bedouin-Arab Children of Polygamous Families as Reflected in Their Family Drawings" (2000) 38 *American Journal of Art Therapy* 98.

monogamous families. These experiences may be due in part to the negative socio-economic effects of polygamous family structure. Financial distress in the family is associated with parental intolerance (which may lead to child abuse and neglect), depression, antisocial behaviour, poor impulse control, poor academic outcomes, low self-concept and a higher incidence of health problems. Often children's instrumental needs (e.g., school supplies, clothing) go unmet in polygamous families. In sum, the research suggests a number of negative consequences for Bedouin-Arab children living in polygamous families.

64. Studies from Jordan and the United Arab Emirates have also found that children whose fathers entered into second marriages suffered educational difficulties and negative psychological effects as a result.⁹⁴

65. There are two studies from the Middle East which reported that, *taking account of higher levels of poverty in polygamous families*, there were no significant differences in the mental health or teacher-reported behaviour of adolescents from polygamous and monogamous families.⁹⁵ However, polygamy is associated with lower socio-economic status and poverty, resulting in the children from polygamous families in these studies also having worse outcomes than the children from monogamous families.

(v) Research on Economic Impacts of Polygyny on Society

66. There are some studies from Africa that attempt to assess the overall demographic and economic impact of high levels of polygamy on a society. Polygyny appears to have a number of negative economic impacts on society as a whole, associated with such factors as "scarcity" of brides and hence a high "bride price" and "investment" in spouses "crowding out" investment in physical assets. Polygyny is also associated with high fertility rates, large family size and poverty, and hence less social and educational investment in children.⁹⁶

67. In 2008 the Organization for Economic Co-operation and Development released a study comparing different types of households in the Ivory Coast, Ghana, Indonesia and China; polygamy is practiced in all of these countries except China.⁹⁷ The paper made comparisons

94 Mariam Sultan Al-Shamsi & Leon C. Fulcher, "The Impact of Polygamy on United Arab Emirates First Wives and Their Children" (2005) *International Journal of Child & Family Welfare* 46.

95 Sami Hamdan, Judy Auerbach & Alan Apter, "Polygamy and Mental Health of Adolescents" (2009) 18 *European Child & Adolescent Psychiatry* 755; S. Elbedour, William Bart & Joe Hektner, "The Relationship between Monogamous/Polygamous Family Structure and the Mental Health of Bedouin Arab Adolescents" (2007) 30 *Journal of Adolescence* 213.

96 Michèle Tertilt, "Polygyny, Fertility, and Savings" (2005) 113 *Journal of Political Economy* 1341; Ester Boserup, *Woman's Role in Economic Development* (London: Earthscan, 2007) at 25-40.

97 Juan R. de Laiglesia & Christian Morrison, *Household Structures and Savings: Evidence from Household Surveys*, Working Paper No. 267, Organization for Economic Co-operation and Development, Paris, 2008.

within, as well as between, countries. The study concluded that polygamy “entails a large increase in fertility and an even larger decrease of savings” and wealth per capita. Further, children in polygamous families receive significantly less education; while some of the difference is due to lower wealth per capita, regression analysis of the data reveals that disparities in wealth do not explain all of the difference, and that social factors also have an influence on the lower familial investment in children’s education in polygamous families. The paper included suggestions for social policies that might discourage formation of polygamous households.

(vi) Empirical Research on Effects of Polygyny — A Concluding Comment

68. All of the empirical social science research comparing outcomes for polygamous and monogamous families is based on populations in Africa and the Middle East, where polygamy is relatively common and legal. Thus, there is a lack of empirically sound research to irrefutably establish the harmful effects of polygamy in Canada; this reflects the difficulty of doing research with polygamous families, who tend to be highly secretive. However, the research literature from Africa and Asia establishes that polygamy is generally harmful for women and children, which is broadly consistent with the first person, media and ethnographic reports about polygamy in Canada.

CANADIAN VALUES REFLECTED IN FREEDOM OF RELIGION JURISPRUDENCE

69. In the context of a discussion regarding section 293 of the *Criminal Code* and whether it violates freedom of religion, as guaranteed by section 2(a) of the *Charter of Rights*, it is relevant to consider which religions (if any) require, or at least promote, polygamous marriage. Only Fundamentalist Mormons can claim that their religion *requires* them to practice polygamy, or at least considers it a preferred practice in some situations. Islam *permits* polygamy but does not *require* their adherents to practice polygamy, making any freedom of religion arguments by Muslims much weaker. The fact that predominantly Muslim countries like Tunisia and Turkey have prohibited polygamy reveals that such a prohibition is not inconsistent with Islam.

70. The 2007 decision of the Supreme Court in *Marcovitz v. Bruker*⁹⁸ establishes that the differential gender impact of religious practices must be taken into account when assessing the scope of religious freedom. The 2009 decision in *Alberta v. Hutterian Brethren of Wilson Colony*⁹⁹ demonstrates that the Court will give considerable weight to societal harm when deciding on the validity of a law that restricts religiously based practices. These recent decisions clearly establish that religious freedom is not an unbounded concept. To the contrary, the Supreme Court gives significant deference to governments to restrict practices that may cause social harm, even if those practices are based on sincerely held religious beliefs.

98 2007 SCC 54, [2007] 3 S.C.R. 607 [Bruker].

99 2009 SCC 37, 9 Alta. L.R. (5th) 1 [Hutterian].

71. In *Marcovitz v. Bruker*, a Jewish woman was suing her former husband for monetary damages for his failure to honour his commitment, made as part of a divorce settlement, to give her a Jewish divorce, or *get*. Under Jewish religious law, only a husband can give a *get*, and a wife cannot obtain a one unless her husband agrees to give it; he does so by “releasing” his wife from the marriage, thereby permitting her to remarry. The process has no legal significance in Canada, but it has religious significance. The man in *Bruker* argued that his agreement to give a *get* was not valid under Quebec law, which governed the separation agreement, as it violated his right to freedom of religion. Justice Abella, writing for a majority of the Court, recognized the challenges in respecting “tolerance for diversity and pluralism” in the context of Canada’s “growing appreciation for multiculturalism, including the recognition that ethnic, religious or cultural differences will be acknowledged and respected.” The respect for these differences, however, is limited:

The right to have differences protected, however, does not mean that those differences are always hegemonic. Not all differences are compatible with Canada’s fundamental values and, accordingly, not all barriers to their expression are arbitrary. Determining when the assertion of a right based on difference must yield to a more pressing public interest is a complex, nuanced, fact-specific exercise that defies bright-line application. It is, at the same time, a delicate necessity for protecting the evolutionary integrity of both multiculturalism and public confidence in its importance.¹⁰⁰

72. Justice Abella went on to quote with approval from the decision of the South African Constitutional Court in *Christian Education South Africa v. Minister of Education*,¹⁰¹ a case which explored the limitations of religious freedom in a challenge to a law prohibiting corporal punishment of students in schools. An association of independent Christian schools claimed that corporal punishment was mandated by the Bible. In a decision upholding the prohibition against corporal punishment, Sachs J. explained the need to limit religious freedom:

The underlying problem in any open and democratic society based on human dignity, equality and freedom in which . . . 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.¹⁰²

73. In concluding in *Bruker* that the *Charter* was not violated, Abella J. emphasized the fact

100 *Bruker*, supra note 98 at para. 2.

101 (2000), 10 B. Const. L.R. 1051 (S. Afr. Const. Ct.).

102 *Ibid*, at para. 35.

that Jewish religious law governing the giving of a *get* has a “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, primarily women.’”¹⁰³ Although the ruling in this case was governed by the Quebec *Charter of Human Rights and Freedoms*, in reaching its decision the Court made extensive reference to jurisprudence under the Canadian *Charter*. It is clear that *Bruker*, with its concern about the effect of claims based on religious freedom on the vulnerable, especially women and children, is very relevant to the issues raised by the polygamy challenge under the *Charter*.

74. In its 2009 decision in *Hutterian*, the Supreme Court upheld the validity of a provincial law that requires a driver’s licence to have a photograph of the driver by a four to three majority. The Court rejected a claim by a small group of Hutterites for a constitutional exemption based on their sincerely held and long-standing belief that the Bible prohibits them from having their photograph taken. The case proceeded on the basis that the universal photo requirement infringed the section 2(a) *Charter* rights of the Hutterites. The Court ruled that the province had satisfied the onus under section 1 of the *Charter*, as the impugned regulation is justified to maintain the integrity of the driver’s licensing system and minimize the risk of identity theft. The Court held that in satisfying the section 1 *Oakes* test,¹⁰⁴ the government is entitled to justify the law, not by showing that it has accommodated the claimant, but by establishing that the measure is rationally connected to a pressing and substantial goal, minimally impairing of the right and proportionate in its effects. Chief Justice McLachlin, writing for the majority, was clearly prepared to give the state some deference in its limitation of practices based on sincerely held religious beliefs:

Freedom of religion presents a particular challenge . . . [for the courts] because of the broad scope of the *Charter* guarantee. Much of the regulation of a modern state could be claimed by various individuals to have a more than trivial impact on a sincerely held religious belief. Giving effect to each of their religious claims could seriously undermine the universality of many regulatory programs . . . to the overall detriment of the community.

If the choice the legislature has made is challenged as unconstitutional, it falls to the

103 *Bruker*, supra note 98 at para. 81, quoting from Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women’s Rights* (Cambridge: Cambridge University Press, 2001) at 62.

104 *R. v. Oakes*, [1986] 1 S.C.R. 103. This test requires the Court to consider:

Is the limit on the s. 2(a) right justified under s. 1 of the Charter?

- (a) Is the limit prescribed by law?
- (b) Is the purpose for which the limit is imposed pressing or substantial?
- (c) Is the means by which the goal is furthered proportionate?
 - (i) Is the limit rationally connected to the purpose?
 - (ii) Does the limit minimally impair the right?
 - (iii) Is the law proportionate in its effect?
- (d) Conclusion on justification.

courts to determine whether the choice falls within a range of reasonable alternatives. Section 1 of the *Charter* does not demand that the limit on the right be perfectly calibrated, judged in hindsight, but only that it be ‘reasonable’ and ‘demonstrably justified’ . . . The bar of constitutionality must not be set so high that responsible, creative solutions to difficult problems would be threatened. A degree of deference is therefore appropriate.¹⁰⁵

She concluded that “the real issue is whether the impact of the rights infringement is disproportionate to the likely benefits of the impugned law.”¹⁰⁶

75. In addition to freedom of religion issues, there are potential section 7 issues related to the “freedom to marry” that may be relevant to the polygamy debate. Section 7 of the *Charter* provides that no person shall be deprived of “life, liberty or security of the person . . . except in accordance with the principles of fundamental justice.” This is similar to the Due Process Clause of the Fourteenth Amendment of the United States Constitution, a provision that has been invoked by American courts to strike down some restrictions on marriage in that country. Most notably, in its 1967 decision in *Loving v. Virginia*, the United States Supreme Court held that anti-miscegenation statutes, which prohibited mixed race marriages, violated the Due Process Clause: “The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.”¹⁰⁷ In its 1978 decision in *Zablocki v. Redhail*, the American Supreme Court struck down a state law that prohibited remarriage by persons with child support arrears, concluding that the “right to marry is part of the fundamental ‘right of privacy’”.¹⁰⁸ Despite this recognition of a freedom to marry, American courts have consistently held that polygamy is outside the definition of “marriage”, and have rejected constitutional challenges to legislation prohibiting polygamy.¹⁰⁹ While Canadian courts would

105 Hutterian, supra note 99 at paras. 36-37.

106 Ibid. at para. 76.

107 388 U.S. 1, at 12 (1967).

108 434 U.S. 374, at 384 (1978).

109 For arguments by American scholars that polygamy laws are unconstitutional following the *Lawrence v. Texas* decision, see Mark Strasser, “Marriage, Free Exercise, and the Constitution” (2008) 26 *Law & Inequality* 59; Jamie M. Gher, “Polygamy and Same-Sex Marriage – Allies or Adversaries within the Same-Sex marriage Movement” (2008) 14 *Wm. & Mary J. Women & L.* 559; Andrew F. March, “Is There a Right to Polygamy and Incest? Should a Liberal State Replace ‘Marriage’ with ‘Registered Domestic Partnerships?’” (2008) [unpublished, archived at Yale Law School]; Shayna M. Sigman, “Everything Lawyers Know About Polygamy is Wrong” (2006) 16 *Cornell J. L. & Pub. Pol’y* 101; Alyssa Rower, “The Legality of Polygamy: Using the Due Process Clause of the Fourteenth Amendment” (2004) 38 *Fam. L.Q.* 711; and Samantha Slark, “Are Anti-Polygamy Laws an Unconstitutional Infringement of the Liberty Interests of Consenting Adults?” (2004) 6 *J.L. & Fam. Stud.* 451.

For articles arguing that American laws prohibiting polygamy are constitutional, see Kristen A. Berberick, “Marrying into Heaven; The Constitutionality of Polygamy Bans Under the Free Exercise Clause” (2007) 44 *Willamette L. Rev.* 105; Hema Chatlani, “In Defense of Marriage: Why Same-Sex Marriage Will Not Lead Us Down a Slippery Slope Toward the Legalization of Polygamy” (2006) 6 *Appalachian J.L.* 101; Eve D’Onofrio,

undoubtedly recognize the “freedom to marry” if faced with the type of miscegenation legislation that the American courts considered in cases like *Loving*, the legislative prohibitions on polygamy in both Canada and the United States impose a very different restriction on the right to marry, limiting it to monogamous relationships.

76. The question of the constitutionality of the laws prohibiting polygamy is likely to be resolved under section 1. The application of section 1 of the *Charter* requires the government to justify the law as a “reasonable limit” in a “free and democratic” society. This requires consideration of some social policy and value-based questions: Do women and children generally suffer significant harms in polygamous families as compared to those in monogamous families? What are the social and economic costs of polygamy? Does polygamy result in the exploitation of vulnerable women and adolescents? What is the impact on children of being raised in a polygamous family?

77. As discussed above, there are significant numbers of research studies and first person accounts that raise serious concerns about the exploitation and abuse of women in polygamous relationships. There is a growing body of research from societies where polygamy is widely practised which finds that there is a greater prevalence of low self-esteem, loneliness and poverty among women living in polygamous relationships than among women in monogamous marriages. Women in polygamous marriages are in an inherently vulnerable and unequal position in social and economic terms, and are more likely to be victims of domestic violence. There are also a number of studies which have found that, in comparison to children from monogamous families, children from polygamous families have lower self-esteem, higher levels of self-reported family dysfunction, and lower levels of socio-economic status and academic achievement.

78. In dealing with section 1 of the *Charter*, the courts have made clear that a law may be valid even if other narrower measures might also afford protection. In the *Hutterian* case, McLachlin C.J. observed that the state need not take the most “radical approach” to addressing a social problem in order to satisfy section 1.¹¹⁰ Thus, the fact that not all women and children are detrimentally affected by living in polygamous families does not preclude a finding that, in general, the prohibition on polygamy serves to prevent harm.¹¹¹

“Child Brides, Inegalitarianism, and the Fundamentalist Polygamous Family in the United States” (2005) 19 Int’l. J.L. Pol’y & Fam. 373; Joseph Bozzuti, “The Constitutionality of Polygamy Prohibitions After *Lawrence v. Texas*: Is Scalia a Punchline or a Prophet?” (2004) 43 Cath. Law. 409; and Cassiah M. Ward, “I Now Pronounce You Husband and Wives: *Lawrence v. Texas* and the Practice of Polygamy in Modern America” (2004) 11 Wm. & Mary J. Women & L. 131.

For an argument that s. 293 of the Criminal Code is vague and overbroad, and hence violates the section 7 of the Charter, see Susan G. Drummond, “Polygamy’s Inscrutable Criminal Mischief” (2009) 47 Osgoode Hall L.J. 317.

110 *Hutterian*, supra note 99 at para. 64.

111 See *R. v. Malmo-Levine*; *R. v. Caine*, 2003 SCC 74, [2003] 3 S.C.R. 571; and *R. v. Sharpe*, 2001 SCC 2,

79. There are also broader societal concerns about the prospect of decriminalization of polygamy. In many societies where polygamy is legal, some men—those who are wealthy or powerful—have multiple wives, forcing men who would otherwise marry to remain single.¹¹² Societies which continue to recognize polygamy are not only deeply patriarchal, but they may also tend to have a much more rigid social structure than Canada. There is, accordingly, a growing worldwide trend towards prohibiting polygamy, even in societies where polygamy has long, religiously-based traditions, reflecting the greater recognition of gender equality. There is a growing acceptance that the social reality of polygamy violates international human rights laws.¹¹³

POLYGAMY, MULTICULTURALISM AND IMMIGRATION

(i) Western Europe & France

80. There are some commentators who argue that Canada's acceptance of multiculturalism requires that immigration should be permitted by polygamist families from countries where this practice is legal, and advocate for Canadian law to recognize the validity of such marriages in this country.¹¹⁴ It is interesting to note that at one time a number of Western European countries had open immigration policies for polygamist families, but all changed these policies after it became clear that there are a number of serious social problems associated with this family structure.¹¹⁵

81. Research on polygamy in France, specifically on the experiences of African (Malian) immigrants, raises the issue of the conflict of immigrant laws and customs with those of the

[2001] 1 S.C.R. 45 for a discussion of what constitutes "harm" for the purposes of a section 1 Charter argument.

112 The Canadian political theorist Tom Flanagan worries about the inequities which polygamy creates between men, observing that if polygamy is widely practiced there will be a significant group of men without families and who are likely to be socially disruptive. Flanagan argues that polygamy produces brutal societies "dominated by a warrior cult of violent masculinity". T. Flanagan, "Our sexual constitution: The link between monogamy and democracy, polygamy and the sexual constitution" *Globe and Mail* (4 September 2007). There are also legitimate economic concerns about costs to employers and others if a person can claim to have two or more spouses, each of whom would be entitled to spousal benefits.

113 Rebecca J. Cook & Lisa M. Kelly, *Polygyny and Canada's Obligations under International Human Rights Law* (Ottawa: Department of Justice Canada, 2006).

114 Martha Bailey et al., *Expanding Recognition of Foreign Polygamous Marriages: Policy Implications for Canada* (Ottawa: Status of Women Canada, 2005). For an American perspective on immigration issues related to polygamy, see Claire A. Smearman, "Second Wives' Club: Mapping the Impact of Polygamy in U.S. Immigration Law" (2009) 27 *Berkeley J. Int. L.* 382.

115 The issue is especially serious in France where there is a large immigrant polygamist population from North Africa. See e.g. Genevieve Oger, "France's Polygamy Problem" *Deutsche Welle* (31 July 2005), online: DW-World.DE <<http://www.dw-world.de/dw/article/0,1564,1664241,00.html>>.

dominant society, an issue also presented by Muslim immigration to Canada. Sargent and Cordell¹¹⁶ examined this conflict in the French context, noting the difficulty that Malian women and children in polygamous unions experience in France; household incomes are low and co-wives, who typically had separate dwellings in their country of origin, are forced to live together in cramped urban apartments. There is often considerable conflict between co-wives. The conditions of polygamy in France result in considerable feelings of discontent among these immigrant women.

82. Prior to 1993, men who had entered into a polygamous union in their country of origin could bring all of their children and their first wife into France; further, multiple wives could immigrate to be reunified with husbands legally in France, citing polygamy as their marital status. However, in 1993 legislation was changed to prohibit reunification of husbands and wives in polygamous marriages. As Sargent and Cordell identify, "the conjuncture of increasingly restrictive immigration policies, an implicit French policy of encouraging contraceptive use among immigrants, continued pronatalism among Malian men, and tensions surrounding polygamy has generated a crisis in the area of reproduction . . ." ¹¹⁷

83. The Directive of the Council of the European Union permits countries in the Union to limit immigration by parties to polygamous marriages, and a husband can now only sponsor one wife in a polygamous marriage.¹¹⁸ Between 1980 and 1993, France permitted the reunification of polygamous families, allowing men who were resident in France to bring more than one wife into France to live with them. Further, there continues to be illegal immigration by members of polygamous families. Thus there are significant numbers of polygamous families living in France, principally those of West African origin. It is estimated that there may be as many as 50,000 polygamous families in France.¹¹⁹

84. Since 1993, the French government has been attempting to reduce the number of polygamous households. Citing problems like large families resulting in lack of appropriate housing, heavy burdens on social services, and the detrimental effects that such relationships have on women and children, starting in 1993 men who married multiple wives elsewhere could legally bring only one wife and her children to France, while the children of the other wife or wives are now only permitted to join their father in France under limited circumstances.¹²⁰

116 Carolyn Sargent & Dennis Cordell, "Polygamy, Disrupted Reproduction, and the State: Malian Migrants in Paris, France" (2003) 56 *Social Science & Medicine* 1961.

117 *Ibid.* at 1964.

118 EC, Council Directive 2003/86/EC of 22 September 2003, On the Right of Family Reunification, [2003] O.J. L. 251/12.

119 "France: Report denounces 'destructive' polygamy," *Islam in Europe* (21 November 2009), online: *Islam in Europe* <<http://islamineurope.blogspot.com/2009/11/france-report-denounces-destructive.html>>.

120 Pascale Fournier, *The Reception of Muslim Family Law in Western Liberal States* (N.p.: The Canadian

There have also been efforts in France to encourage “de-cohabitation” of multiple wives by disentitling them to social assistance if they reside with their husband. In practice, however, this can be very difficult to enforce. Overall, addressing the problems of polygamous families in France has been an expensive social problem.

(ii) United Kingdom

85. The United Kingdom has a policy of “prevent[ing] the formation of polygamous households” in the United Kingdom.¹²¹ This policy is achieved, in part, through section 2 of the *Immigration Act, 1988*, which allows only one of the wives involved in a polygamous marriage to be sponsored by a husband who is lawfully in the United Kingdom to immigrate. In a debate over the enactment of that *Act*, then Home Secretary Douglas Hurd stated that the number of polygamous wives entering the United Kingdom was minimal, but that “polygamy is not an acceptable social custom in this country.”¹²² Shah argues that, while polygamy was originally prohibited in Britain because of arguments grounded upon the Christian view of marriage in that country, those arguments have now “metamorphosed into the unacceptability of the custom on grounds of ‘community relations’ or the norms of gender equality and human rights.”¹²³

86. Although generally only one wife is permitted to enter England, the *Immigration Act, 1988* provides for an exception in the case of a plural wife who entered the United Kingdom before 1988. The *Act* also provides for an exception in the case of a woman who entered the United Kingdom after her marriage and while her husband was not living in the United Kingdom with a different wife.

87. Ongoing concern about the practice of polygamy in the United Kingdom is indicated by the recently enacted *Asylum and Immigration (Treatment of Claimants, etc.) Act, 2004*. Section 14 increases the powers of arrest of immigration officers to include a situation where the immigration officer has formed a reasonable suspicion that a person has committed or attempted to commit one of a number of crimes, including bigamy.

88. It is now estimated by the government that there are at least 1,000 men with polygamous families in the United Kingdom, and unofficial estimates are much higher. Almost all of these families are large, and many are receiving high levels of government assistance. These are reportedly all Muslim families. Many of them involve an original monogamous marriage, with

Council of Muslim Women, June 2004).

121 U.K., Home Office, Immigration Directorates’ Instructions (Chapter 1 Section 8 – Spouses – Annex C, London: Home Office, 2003) at 2, online: Home Office <<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/IDIs/>

122 U.K., H.C., Parliamentary Debates, vol. 122, col. 785 (Douglas Hurd), quoted in Prakash A. Shah, “Attitudes to Polygamy in English Law” (2003) 52 I.C.L.Q. 369 at 392.

123 Prakash A. Shah, “Attitudes to Polygamy in English Law” (2003) 52 I.C.L.Q. 369 at 392.

the husband later returning to his country of origin and taking a second (or third or fourth) younger wife. Although legally a man can only sponsor one wife to immigrate, subsequent wives may enter the United Kingdom on visitors or student visas, and then try to claim permanent status based on refugee or humanitarian claims. In some cases, the second and subsequent marriages take place in Britain, performed illegally by an imam. Some Muslim leaders argue that polygamy should be legal in multicultural Britain. However, Baroness Warsi, a Conservative member of the House of Lords who is British-born of Pakistani parents, has claimed that the government and politicians have failed to tackle the problem of polygamy because of “cultural sensitivity” issues.¹²⁴

(iii) Canada

89. Polygamy is one of the issues that Canadian society must address when deciding on the limits to multiculturalism in this country. There are strong arguments in favor of continuing the legal prohibitions against polygamy in Canada, which are embodied in the present laws which both criminalize polygamy and prevent the immigration into Canada of parties to a polygamous marriage.¹²⁵ Significant immigration by polygamous families to Canada would have profound social implications. However, if section 293 is ruled unconstitutional under sections 7 or 15 of the *Charter*, there would be a strong basis for challenging the prohibition on immigration by polygamist families, and for allowing sponsorship and family reunification based on the relationships created by polygamous marriages.

PROTECTION FOR WOMEN AND CHILDREN IN POLYGAMOUS FAMILIES

90. Assuming that section 293 is valid, in this writer’s view there should be prosecutorial restraint in the use of the criminal law to combat the practice of polygamy in Canada. Although technically all parties to a polygamous relationship violate section 293 of the *Code*, it was appropriate that the special prosecutor in British Columbia decided only to charge the husbands in polygamous relationships, and not the wives, who are clearly more vulnerable and exploited, and who may well have been pressured to enter into these marriages. Criminal prosecutions should only be used against men who have plural wives, and should particularly be used in cases where women have been coerced into entering the relationship, or where women have entered into the relationship while minors.¹²⁶

91. Further, there should be culturally sensitive services provided to support women and

124 U.K., 2004, c. 19.

125 Canadian immigration policy excludes those living in a polygamous relationship; see *Ali v. Canada (Minister of Citizenship and Immigration)* (1998), 154 F.T.R. 285; and “An ideal candidate for immigration is denied after it is learned he has two wives” *The National Post* (1 February 2005) A7.

126 For a discussion of the value of selective criminal prosecutions for polygamy in the United States, see Ryan White, “Two Sides of Polygamy,” [2009] *Utah L. Rev.* 495.

children who want to leave these relationships, and humanitarian immigration claims should be accepted for women and children from these marriages who have been long term residents in Canada. Apprehension of children by child protection authorities, in particular from the care of their mothers, should occur only if there is evidence of abuse or neglect, or that an adolescent female faces the imminent prospect of a coercive relationship or marriage.¹²⁷ The family courts should afford women leaving polygamous relationships the same relief as would be afforded an unmarried cohabitant, such as the right to obtain child support and spousal support, and a property claim based on constructive trust.¹²⁸

92. While it may be argued that advocacy for both legal prohibition and restraint in enforcement is contradictory, this is not an unusual response to harmful social practices, such as drug use and prostitution. For a number of “victimless crimes”, criminal laws are enacted to protect both the vulnerable and society. For some civil libertarians and other advocates, such laws are an inappropriate restraint of freedom, with arguments that these laws allow for the prosecution of the vulnerable, as well as the exploiters. These laws are (or should be) primarily enforced against those who are exploitative (like drug dealers, and customers of prostitutes and pimps), with the intent of reducing the incidence of these corrosive practices. There are, however, sound symbolic, educational and practical reasons for having these laws broadly drafted to allow for prosecution of both the exploiters and the vulnerable.¹²⁹ At the same time, social and health services are (or should be) provided to those who are most harmed (drug addicts and street prostitutes), even if they are also technically violating the law.

127 Catherine J. Ross, “Legal Constraints on Child-Saving: The Strange Case of the Fundamentalist Latter-Day Saints at Yearning for Zion Ranch” (2008) 37 *Capital U.L. Rev.* 361; Linda Smith, “Kidnapped from that Land II: A Comparison of Two Raids to Save the Children from the Polygamists” *Child. Legal Rts. J.* [forthcoming in 2010]; and Martin Guggenheim, “Texas Polygamy and Child Welfare” (2009) 46 *Houston L. Rev.* 759. For an argument for a broader use of child protection law when children reside with parents who are in a polygamous marriage, see Mary Anne Case, “Feminist Fundamentalism on the Frontier Between Government and Family Responsibility for Children” [2009] *Utah L. Rev.* 381.

128 The question of how to afford family law relief to one former wife when one or more wives remain with a husband is likely to be technically complex, and if there are many children, as is also likely to be the case, the resources available to a former wife are likely to be limited. See Lisa M. Kelly, “Bringing International Human Rights Law Home: An Evaluation of Canada’s Family Law Treatment of Polygamy” (2007) 65:1 *U. T. Fac. L. Rev.* 1. See also *Basi v. Dhaliwal* (1992), CarswellBC 1259 (Prov. Ct.).

129 Since the law is intended to protect women, there is an argument that if a woman in a polygamous marriage were to be prosecuted, she could claim that a “constitutional exemption” should be read in to protect her. See Peter W. Hogg, *Constitutional Law of Canada*, Student ed. (Toronto: Carswell, 2009) at 892-907 for a discussion of remedies that the courts may adopt to interpret legislation in a way that is constitutionally valid while restricting its effect to be consistent with the Charter, including severance, “constitutional exemption”, reading in and reading down, and “constitutional restructuring”.

CONCLUSION: A FUTURE FOR POLYGAMY IN CANADA?

93. The legal status of polygamy in Canada will not be decided by academics, whose views about the constitutionality and wisdom of the prohibition of this practice are divided.¹³⁰ Nor is polygamy likely to be recognized by politicians, who are most unlikely to take steps to accept a form of marriage that the vast majority of Canadians believe to be unacceptable. Rather, the legal status of polygamy will be resolved in the courts, where reasoned argument and assessment of this law will be made.

94. Although the *Charter*, as interpreted and applied by the courts, has a vitally important role in protecting individuals and minorities from the “tyranny of the majority”, in a constitutional democracy, the courts are and should be cautious about straying too far from widely shared views about a social institution as fundamental as marriage.¹³¹ Significantly, while same-sex marriage was a highly contentious issue, by the time the courts rendered constitutional decisions requiring recognition of same-sex marriage, public opinion polls indicated that a majority of Canadians supported such action. In the end, it was not “undemocratic activist” judges who imposed same-sex marriage on society against the will of a majority of the Canadian public. Rather the courts nudged politicians to take action on an issue that had the support of a majority of Canadians, albeit in the face of opposition from a vocal, committed minority who opposed same-sex marriage.¹³² Recognition of same-sex marriage also promoted the stability of

130 For papers which argue that s. 293 of the Criminal Code likely violates the Charter, see Martha Bailey et al., *Expanding Recognition of Foreign Polygamous Marriages: Policy Implications for Canada* (Ottawa: Status of Women Canada, 2005); R.G. Harvie, “I Do, I Do and I Do Again: Questions Arising From Bountiful” (2010) 34 *Law Now* 3; and Susan G. Drummond, “Polygamy’s Inscrutable Criminal Mischief” (2009) 47 *Osgoode Hall L.J.* 317. See also the discussion in Robert Leckey, “Families in the Eyes of the Law: Contemporary Challenges and the Grip of the Past” (2009) 15:8 *IRPP Choices* at 10-11; and Benjamin Berger, “Moral Judgement, Criminal Law and the Constitutional Protection of Religion” (2008) 40 *Sup. Ct. L. Rev* (2d) 513.

131 Florian Sauvageau, David Schneiderman & David Taras, *The Last Word: Media Coverage of the Supreme Court* (Vancouver: UBC Press, 2006) write about the complex interaction of public opinion and judicial decision-making. They observe that the Supreme Court has “. . . been a skilled and cautious interpreter of the public mood, never moving too quickly or too far ahead of public opinion” (at 233-34). For a discussion of the extent to which courts should and do take account of public opinion in interpreting the constitution, see Cass R. Sunstein, “If People Would be Outraged by Their Rulings, Should Judges Care?” (2007) 60 *Stanford L. Rev.* 155; and Michael L. Wells, “‘Sociological Legitimacy’ in Supreme Court Opinions” (2007) 64 *Washington & Lee L. Rev.* 1011. As recognized by Elena Kagan in her confirmation hearing for a position as a justice of the United States Supreme Court: “The Supreme Court, of course, has the responsibility of ensuring that our government never oversteps its proper bounds or violates the rights of individuals. But the court must also recognize the limits on itself and respect the choices made by the American people.” Quoted in Jonathan Rauch, “A Kagan Doctrine on Gay Marriage,” *New York Times*, July 2, 2010.

132 A survey in July 2004 by the Centre for Research and Information on Canada and Environics found that 57% of Canadians supported allowing same-sex marriage, while only 38% were opposed: online:

<http://www.cric.ca/pdf_re/new_canada_redux/new_canada_redux_summary.pdf>. A March 2009 poll indicated that 85% of respondents opposed legal changes to recognize polygamy, and only 10% supported such changes: <http://www.familyaction.org/Articles/issues/family_marriage/poly-compaspoll.pdf>. See also “Most want referendum” *The National Post* (2 February 2005) reporting that only 13% of the Canadian public supported legal

economically and socially valued relationships.

95. Extending legal recognition of polygamy, however, is supported only by a small minority of Canadians, and it would seem unwise for the courts to try to impose this type of dramatic legal and social change on Canadian society. As reflected in the existing *Charter* jurisprudence, Canadian values, in particular the belief in gender equality, are much more consistent with a prohibition on polygamy than granting some form of legal recognition to this inherently unequal relationship. Concerns about the welfare of children should also play a significant role in assessing the constitutional validity of this law. Further, courts in Canada should take into consideration that polygamy is an institution which internationally is increasingly rejected as inherently unequal and economically costly, and that courts in other countries have consistently upheld the constitutional validity of laws prohibiting polygamy.

96. Critics of the present law may argue that making polygamy illegal only drives the practice “underground”,¹³³ and that it can never be totally eliminated in Canada. Aggressive enforcement of this criminal law would be highly intrusive, and some may continue to clandestinely live in these relationships, whatever the *Criminal Code* provides. However, the criminal prohibition on polygamy undoubtedly reduces the incidence of a practice that is socially harmful and contrary to fundamental Canadian values. This criminal law serves important symbolic and educational functions, and there is even some suggestion that the threat of prosecution and the publicity surrounding the harms of polygamy may be slowly changing attitudes and practices in Bountiful.¹³⁴ Further, the criminal prohibition anchors our immigration law. If the courts were to rule section 293 of the *Criminal Code* unconstitutional, there would very likely be a significant increase in the number of women and children living in such relationships in Canada over time, along with the attendant social and economic costs.

recognition of polygamy.

133 Ann Laquer Estin, “Unofficial Family Law” (2009) 94 Iowa L. Rev. 449.

134 Angela Campbell, “Bountiful needs a critical assessment” *National Post* (26 September 2009) A7.

23/06/10

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Personal Information

Date of Birth: March 14, 1952
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Married - spouse Martha Bala is a Family Physician (retired)
Children: Emily Anne, born in 1986
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Sarah Elizabeth, born in 1996

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Post-Secondary Education

LL.M., Harvard Law School: 1979-1980

Doctoral Fellowship of SSHRC., LL.M. Paper -- "*Consequences of Separation for Unmarried Couples: Canadian Developments*" (revised version published in 1980, 6 Queen's Law Journal).

LL.B. Faculty of Law, Queen's University: 1974-1977

Awards: Criminal Procedure Prize, 1977; Robinson-Ryan Award for contribution to Queen's Legal Aid, 1977; International Law Prize, 1976; Property Law Prize, 1975; Criminal Law Prize, 1975; Public Law Prize, 1975; Queen's University Entrance Scholarship, 1974

B.A. Honours Economics, University of Toronto: 1970-1974

Awards: Graduated with First Class Standing, 1974; Nathanson Award in Economics and Political Science, 1973; New College Council Scholarship, 1971, 1972 and 1973

Employment and Professional Work

Professor, Faculty of Law, Queen's University, Kingston, 1980 to present (promoted from Assistant Professor July 1983; promoted from Associate Professor June 1989). Responsibilities include: teaching courses in Advanced Family Law, Family Law (Fall 2004), Children's Law (Fall 2004), Clinical Family Law, Contracts (Winter 2005), Commercial Law and Civil Procedure; committee work; student counselling; moot court supervision; student research paper supervision. Chair of Faculty Association Advisory Support Group (1985-88), and member of Faculty Association Executive Committee (1987-88) and Senate Committee on Appointments, Promotion, Tenure & (1988-89); Chair University Grievance Board (1990-1993; 1998 -2004).

Associate Dean, Faculty of Law, Queen's University: 1994 -1998 & 2004-05 (Acting)

Career Awards & Honours:

- Queen's University Prize for Excellence in Research, 2006
- Award for Excellence in Family Law Writing from Ontario Family Reporter, 2008
- Association of Family & Conciliation Courts
 - Stanley Cohen Distinguished Research Award, 2008
 - Meyer Elkin Award for best article published in Family Court Review in past year, 2006 co-winner for paper on use of mental health professionals in child-related disputes, and 2009 coauthor of paper on spousal violence and children.
- Queen's Law Students' Society Award for Teaching Excellence, 1993 & Fall Term 1998.
- Finalist for the Queen's University Alumni Teaching Award, 1993 & 1994.
- *Canadian Who's Who*, since 1987
- Queen's University Prize for Excellence in Research, 2006
- Award for Excellence in Family Law Writing from Ontario Family Reporter, 2008
- Law Society Medal, 2009
- Ontario Bar Association, Award for Excellence in Family Law, 2009

Osgoode Hall Law School, Family Law LL.M. (O.P.D, Academic Director (2006-2010), and professor for Children's Issues Course (Fall 2007).

Visiting Scholar, Canadian Research Institute for Law and the Family and University of Calgary, non-resident academic visitor, Fall 1989 (on Sabbatical from Queen's).

Visiting Professor, Duke Law School, Durham, North Carolina, Fall Term 1985, teaching Family Law and Children's Law (on leave from Queen's).

Visiting Lecturer, McGill University, Montreal, Winter Term 1982, Family Law.

Judicial Education On-line – National Judicial Institute (program developer & moderator)

- Youth Detention and Sentencing: April & May, 2007
- International Youth Justice Programs: October & November 2009

Course Instructor (organized, taught and examined)

Ontario Ministry of Community Services, Youth Probation Officers Law Course,
Toronto, April 1998 & Feb.2001

Assistant Director Queen's Legal Aid and Assistant Professor at Faculty of Law, Queen's University, Kingston, 1978-79. Responsibilities included: teaching Clinical Family Law and Children's Law; and supervising about 75 volunteer students in criminal, civil, family, and poverty law work.

Articling Student at Burke-Robertson, Chadwick & Ritchie, in Ottawa, 1977-78. A varied experience in a litigation-oriented practice involving civil, criminal and family law, including court appearances, legal research and drafting, assisting principals at trial, and some real estate work.

Law student clinic worker at Queen's Legal Aid Clinic in Belleville, Ontario, summers 1975 and 1976. Representing clients in various courts and participating in community legal education program. Duties of an administrative and supervisory nature as Student Director of Clinic in 1976-77.

Graduate student supervision & committees:

LL.M. Supervisor at Faculty of Law at Queen's:

- Diana Gordon (1982);
- Harold Ovsiowitz (1986) [sessional lecturer at University of Wittswatersrand];
- Deidre Rice (incomplete)
- Marlene Cano (1986) [faculty appointment at University of Ottawa - Civil Law]
- Martha Bailey (1989) [faculty appointment at Faculty of Law, Queen's University]
- M.J. Raycroft (1993)[sessional lecturer at Queen's]
- Najma Rashid (1997)
- John Schuman (1999)
- Rebecca Bromwich (2002) [sessional lecturer University of Western Ontario]
- Lucinda Ferguson (2002-2003) [faculty appointment at Oxford University].

LL.M. Supervisor for Osgoode Hall Law School major research paper

- L. MacKenzie (Criminal, 2005); R. Birnbaum (Family, 2008); B. Olsen (Family, 2008);
A. Langan (Family, 2009); S. Wong (Constitutional, 2009); P. Pritchett (Family, 2010)

Graduate Committees outside Faculty of Law at Queen's University:

- Carleton PhD Psychology (1999)
- McGill University LL.M. (2000,2001)
- Osgoode Hall Law School LL.M. (1986, 2009), D.Jur (2005)
- Queen's University M.P.A. (1988 & 1996); Queen's M.Ed. (1996, 1998, 1999)
- Queen's PhD. Psychology (1998, 2004, 2006, 2010)
- Queen's M.A. Psychology (1999)

- Queen's Sociology M.A.(2003)
- Queen's Theology M.A.(2003); M. Div. (2010)
- University of Toronto PhD, O.I.S.E. (Child Psychology) (Committee member 2006-09)
- University of Toronto PhD Social Work (2001, 2006)

Legal Consultant to:

- National Study on the Functioning of the Juvenile Courts, 1981 to 1985; this was a multi-disciplinary study of the operation of the Canadian juvenile courts, conducted by the Department of the Solicitor General of Canada
- Ontario Council of Indian Chiefs, on native child welfare reform (1984)
- Department of the Solicitor General of Canada, on Young Offenders Act implementation (1986-87)
- Canadian Teachers' Federation, Ad Hoc Committee on Children's Rights (1986)
- Department of Justice Canada, on Bill C-15 training manual (1987-88)
- Ontario Ministry of Community & Social Services, Child Abuse Register (1987-88;1993-94)
- Institute for the Prevention of Child Abuse (Toronto) on monitoring Bill C-15 (1988)
- Special Advisor on Child Sexual Abuse to the Minister of Health and Welfare Canada (Rix Rogers Study) (1989)
- Manitoba Aboriginal Justice Inquiry, on native young offenders (1989-90)
- Institute for the Prevention of Child Abuse (Toronto) on monitoring Bill C-15 (1990-1992)
- Queen's University Social Program Evaluation Group, on long-term child welfare promotion study, "Better Beginnings, Better Futures" (1990-present); including Kingston Better Beginnings Project
- Department of Justice Canada, on reform of child related provisions of the Divorce Act (1992)
- Department of Solicitor General of Canada, on legal issues related to missing children (1992-93)
- Department of Justice Canada on Young Offenders Reform (Feb. & May, 1994)
- Department of Justice Canada on Research into Children of Divorce (1994)
- Gove Inquiry into Child Protection in British Columbia (1994)
- Department of Justice Canada on Corporal Punishment (1994)
- Department of Justice Canada on Child Support (1995)
- Department of Justice Canada on Family law Reform (1996)
- Saskatchewan Federation of Indian Nations on Aboriginal Youth Justice (1996)
- Health Canada (through SPR Associates) on National Longitudinal Study on Children (1996)
- Department of Justice Canada and Canadian Research Institute for Law & the Family on child support guidelines monitoring project (1997-98)
- Canadian Association of Chiefs of Police training materials for offending by children under 12(1999)
- Robins Inquiry into Child Sexual Abuse in Schools (2000)
- Ontario Ministry of Health through Queen's Health Policy (sexual abuse by health care professionals) (2001)

- Yukon Territorial Government, Dept. of Justice on *Family Violence Prevention Act* (2002)
- Winnipeg Police Services (child witness interview protocol) (2002 - 2003)
- Alberta Legal Education Society, Child Representation Education Committee (2004-05)
- Ontario Ministry of Attorney General (child witness services)(2006-07)
- Canadian Research Institute on Law & Family study on Calgary youth crime (2007-09)
- Canadian Research Institute on Law & Family study of child-related provisions of *Alberta Family Law Act*(2007-08)
- British Columbia Representative of Children and Youth study of youth offending of child welfare wards(2007-08)
- Ontario Ministry of Children & Youth Services study on adoption reform (2009)
- British Columbia Ministry of the Attorney general on family law reform (2009)

Expert Witness

- *M. v. H.* : Filed affidavit in support of successful application to challenge definition of “spouse” so that same-sex partners could claim the same benefits as partners (position accepted by Supreme Court of Canada) (1997-99)
- *Charter Challenge to s. 43 of the Criminal Code*: Filed affidavit and cross-examined in support of position of federal government that parents have privacy interests that merit not-criminalizing use of “reasonable force for purposes of correction.” (Evidence quoted in Supreme Court of Canada) (1999-2004)
- *Civil Liability of Child Welfare Agency*: Retained on referral by Ontario Association of Children’s Aid Societies to provide expert opinion in cases where agency being sued (2004)
- *Le Procureur Général du Québec v. Sa Majesté la Reine du Chef du Canada*, Cour No. T-2834-96 (Federal Court of Canada): Retained by federal government to prepare report for litigation over proper interpretation of *Canada Assistance Plan Act* concerning provision of correctional services to juvenile offenders in Quebec, and testify Nov. 20, 2006. Judgement of Montigny J. June 6, 2008 quoted and relied on testimony of Prof. Bala, see para. 157-217.
- *Cornwall Public Inquiry* into child sexual abuse cases (Glaude Commission), Feb. 14 & 20, 2006.
- *Nova Scotia Public Inquiry* into youth offenders (Nunn Commission), Halifax Feb. 16 & 17, 2006.
- *Goudge Inquiry into Pediatric Forensic Pathology in Ontario*, expert witness on child welfare issues, Toronto, Feb. 21, 2008.

Citation of Published Research by Supreme Court and other Appellate Courts

Work cited by the Supreme Court of Canada in 27 cases, including since 1999 *R. v. W.J.F.* (1999- child witnesses) *Re F.N.* (July 2000- young offenders); *K.L.W. v. Winnipeg Child and Family Services* (October 2000- child protection); *R v Sharpe* (January 2001 - child pornography); *R v Find* (May 2001 - child witnesses); *Miglin v Miglin*, 2003 SCC 24 (separation agreements and support); *Canadian Foundation for Children, Youth and the Law v Canada*, 2004 SCC 4 (constitutional validity of s. 43 of the *Criminal Code.*); *R. v C.D.*, 2005 SCC 78 (youth court sentencing) ; *R v B.W.P.*, 2006 SCC 27 (youth sentencing); *Syl Apps Secure Treatment Centre v. B.D.*, 2007 SCC 38 (role of child welfare agencies); *R. v. D.B.*, 2008 SCC 25, presumptive youth sentencing; *R v L.T.H.*, 2008 SCC 49, youth statements; *R v S.J.L.*, 2009 SCC 14, procedure in youth court.

Other citations of work by Canadian appeal courts since 1999.

Alberta Court of Appeal: *R v T.A.V.*, [2001] A.J. 1679 (admission of evidence in youth court proceeding.)

British Columbia Court of Appeal: *R v B.V.N.* 2004 BCCA 266 (youth court sentencing)

New Brunswick Court of Appeal, *R v L.R.P.* (Sept 8, 2005) (youth court sentencing); *R v K.G.B.*, [2005] NBCA 96 (youth court sentencing); *R v H.J.P.N.*, 2010 NBCA 31 (youth court sentencing).

Nova Scotia Court of Appeal, *R v J.R.L.*, [2007] NSJ 214 (CA)(youth court sentencing)

Ontario Court of Appeal: *Bates v Bates* (2000- child support); *Miglin v Miglin* (2001 - separation agreements & spousal support); *R. v J.H.* (2002 - young offenders); *R. v J.H.* (2002 - young offenders); *Scalon v Standish* (January 2002, contract formation rules); *R v R.E.W.* (2006 – young offenders); *Fisher v Fisher* (2008 – spousal support); *R v V.W.* (2008 – young offenders); *Serra v Serra* (2009 – division of property when assets decline); *R v D.I.*(2010) (vulnerable witnesses)

Prince Edward Island Court of Appeal, *P.E.I (Director of Child Welfare) v. M.O.*, [2006] P.E.I.J. No. 14 (expert evidence in family law cases)

Quebec Court of Appeal: *Renvoi relatif au projet de loi C-7*, [2003] J.Q. 2851 (constitutional validity of *Youth Criminal Justice Act.*)

Saskatchewan Court of Appeal, *R v J.C.N.*, [2005] S.J. 295 (youth court sentencing)

External Reviewer

External Referee (for papers, manuscripts, grant applications)

- Australian Institute for Family Studies (2007, 2008)
- Canadian Council on Social Development, Charter Challenge Program (1986)
- Canadian Centre for Excellence in Child Welfare at University of Toronto (2004, 2005)
- Canadian Research Institute for Law & Family(2006, 2007)
- Durham Region Steering Committee for Women Abuse Survivors (report review)(2000)
- Health Canada (legal issues related to spousal abuse) (2000)
- Humanities and Social Sciences Federation of Canada (2002)
- Ministry of the Solicitor General (1982)

- National Longitudinal Study on Children (Health & Welfare Canada) (1996)
- National Judicial Institute (2005)
- National Science Foundation (USA) (2001, 2002)
- Nuffield Foundation (UK) (2008)
- Ontario College of Physicians & Surgeons, Task Force on Sexual Abuse of Patients(1991)
- Ontario Ministry of the Attorney General, services for child witnesses (2007)
- Pearson Educational Publishers (high school law text) (2002)
- Royal Commission on Aboriginal Peoples (1994)
- Social Science Federation of Canada (1983)
- Social Science and Humanities Research Council (1979, 1984, 1993, 1994, 1995, 1996, 1997, 2000, 2002, 2003, 2005, 2009)

Referee for academic journals

- Alberta Law Review (1994, 2001, 2006[2])
- Canadian Journal of Community Mental Health (2000, 2001, 2002, 2005[2])
- Canadian Journal of Criminology (2006, 2008, 2009)
- Canadian Journal of Family Law (1985, 1986, 1988, 1990, 1991, 1992 & 1994, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006[2], 2007, 2008[2], 2009[3])
- Canadian Journal of Sociology (1985)
- Canadian Public Policy Journal (1990; 2004; 2008)
- Canadian Journal of Law and Society (1991 & 1994)
- Canadian Journal of Women and the Law (1986)
- Canadian Review of Social Policy (1995)
- Child & Youth Services Review (2008)
- Empirical and Applied Criminal Justice Research (on line) (2001)
- Family Court Review (2006, 2007, 2010 [4])
- Fathering, A Journal of Theory, Research and Practice About Men as Fathers (2002)
- International Journal of Children's Rights (2006)
- International Journal of Comparative & Applied Criminal Justice (2010)
- Journal of Child Custody (2007)
- Journal of Criminal Law and Criminology (Northwestern, Chicago) (2008)
- Journal of Family Studies (2008)
- Journal of Law & Religion (2007)
- Journal of Law & Social Policy (2000)
- Journal of Research in Crime and Delinquency (2003)
- Law & Policy (University of Buffalo) (2003)
- McGill Law Journal (1993, 2000, 2007)
- New Zealand Law Review (2000)
- Osgoode Hall Law Journal (1997, 1998, 2004, 2009)
- Ottawa Law Review (1988, 1991, 1992, 1998, 2005)
- Queen's Law Journal (1983, 1985, 1993, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004[3], 2006, 2008)
- University of Western Ontario Law Review (1984)
- University of New Brunswick Law Review (1992)

- Windsor Yearbook of Access to Justice (1998, 1999)

Reviewer for book manuscripts

- Butterworths (1986)
- Calgary University Press (1995)
- Canadian Research Institute for Law & the Family (1993 & 1995)
- Policy Research Centre for Children, Youth & Families (1992)
- Wilfrid Laurier Press (2004)

University Committees (outside Faculty of Law, Queen's)

- City University of Hong Kong Promotions Committee (2005)
- Dalhousie Law School Tenure & Promotions Committee (1986, 1989 & 1991)
- Queen's University, School of Nursing, Promotion Committee (1993)
- Queen's University, Psychology Dept, Promotion Committee (2005)
- Saint Thomas University, Promotion Committee (2005)
- University of Western Ontario Law Promotion Committee (1988)
- University of Toronto, Faculty of Medicine, Promotions Committee (1991)
- University of Calgary Law School, Promotions Committee (1991)
- University of Calgary School of Social Work, Promotions Committee (1999)
- University of Manitoba Law Tenure Committee (1993)
- University of Toronto, Law Tenure Committee (1994); Promotion Committee (2001)
- University of Manchester School of Law Promotion Committee (2001, 2005)

Foundations

- Canadian Donner Foundation (1996)

Scientific Committees (selection of presenters)

- World Conference on Family Violence, Banff Alta, October 2005
- World Child Welfare Forum, Vancouver, November 2006

Editorial Boards

- Child and Family Law Quarterly*, 2007 -present
- Family Court Review*, 2005 - present
- Journal of Family Studies*, 2006-present
- Canadian Journal of Criminology and Criminal Justice*, 2007- present
- Canadian Journal of Community Mental Health*, 1999 – present
- Canadian Journal of Family Law*, Editorial Board, 1990-present
- Young Offenders Service*, 1984 to 1987 - Bala & Lilles, (Butterworths)
- Children and the Law Service*, Editorial Board, 1990-1996

Educational & Conference Planning Committees

- Planning Committee for Queen's Faculty of Law & Frontenac Mediation Service Program on Access, Kingston, December 1980.
- Planning Committee for Canadian Bar Association Domestic Contracts Program, Kingston, January 1981.
- Convenor of Meeting of Family Law Section of Canadian Association of Law Teachers, Kingston, April 1985.
- Planning Committee for Law Society of Upper Canada Program on Bill C-15, Toronto, April 1988
- Planning Committee for Federation of Law Societies National Family Law Program, Montreal, July 1988
- Co-Chair for Law Society of Upper Canada Program on Bill C-15, Kingston, Sept. 1988
- Chair, Legal Program on Children in the Courts, Institute for the Prevention of Child Abuse, Toronto, October 1991
- Steering Committee for Mediation and Domestic Violence Program of Ontario Association of Family Mediators, Spring 1992
- Chair, Legal Responses to Child Abuse Program, Institute for Prevention of Child Abuse, Toronto, October 1992
- International Society of Family Law, North American Regional Conference, Quebec City, June 1996
- International Society of Family Law, North American Regional Conference, Albuquerque, New Mexico, June 1999
- Domestic Partnerships Conference, Kingston, Ontario, October 1999.
- Convenor for International Society of Family Law, North American Regional Conference, Kingston, Ontario, June 2001
- International Society of Family Law, Conference Planning Committee, Eugene Oregon, June 2003
- National Judicial Institute, Curriculum Planning Committees:
 - Youth Justice Curriculum Committee (National), 1999 - 2002
 - Child Witness Curriculum Committee, 2002-2003
 - High Conflict Divorces Curriculum Committee, 2004 - 2006
 - Youth Justice Program for Ontario Court of Justice, May 2005
 - Assessments in Family Law Cases for Manitoba Queen's Bench, September 2005
 - Youth Justice Program for New Brunswick Court of Appeal, Dec. 2005
 - Child Welfare, Ontario Court of Justice, Toronto, Jan. 2006
 - Child Welfare & Child Custody, Superior Courts (Canada), 2005-2007
 - Child Witness Program (Criminal), March 2006
 - Family Law Primer for Ontario Judges, Sept. 2006 & April 2008
 - Domestic Violence for Ontario Judges, 2006-2008
 - Youth Justice Curriculum Committee (National), 2008 - 2009
- Alberta Child Representation Education Committee(Legal Education Society), 2004-05

- International Scientific Committee for World Congress on Family Violence (Banff, Alta, October 2005)
- Law Society of Upper Canada, Family Law Summit, Co-Chair, 2007, 2008, 2009, 2010

Media

Frequently interviewed by radio, television and newspapers concerning Family and Children's law, in particular relating to young offenders, child abuse and divorce, including:

- C.B.C. T.V. "The National" (1989, 2007)
- C.B.C. Newsworld (1990, 1992, 1998 [2], 2006)
- C.B.C. TV News (morning show) (1998, 2000, 2001, 2003 [2], 2004[2], 2005)
- C.T.V. "Canada A.M." (morning show) (1989, 1991, 2005, 2007, 2009)
- C.T.V. National News (2007)
- C.T.V. Newsnet T.V. 2006 [3], 2007 [2]
- Global-Can West T.V. (1998, 2006)
- C.B.C. Radio, national morning current events program (1989, 1994, 1998, 1999, 2000, 2001, 2003, 2004[3], 2006, 2008, 2009)
- C.B.C. Radio national news (1996, 2002, 2006, 2008)
- P.B.S. T.V.(U.S.A.), "The Editors" (2002)
- National Public Radio (U.S.A.) (2004)
- B.B.C. Radio (2000, 2005)
- Op-ed opinion pieces in Toronto Star (1989, 1990), Globe & Mail (2003, 2005)

National Judicial Institute: Electronic Bench Books (editor-in-chief)

(these materials are made available only to judges and are CD-Rom/intranet based; their preparation involves a significant time commitment)

- Youth Criminal Justice (2003 - 2004)
- Child Witnesses (2003- present)

Grants

- Queen's Advisory Research Council, \$1,100, Children's law casebook publication (with Prof. Heino Lilles), 1982.
- Queen's Advisory Research Council, \$1,500 (application with Prof. Heino Lilles); Young offenders project, 1984.
- Lawson Foundation, \$25,000 - joint application with Prof. Martha Bailey for project on United Nations Convention on the Rights of the Child; 1998-99
- Social Sciences & Humanities Research Council, Principal Investigator: \$144,000; 1999-2002 . Study on children as witnesses with co-applicants Profs. Kang Lee & Rod Lindsay of Queen's Psychology, and collaborators Dr. John Leverette in Psychiatry & Ms. Janet Lee, Director of Kingston Victim Witness program.
- Social Sciences & Humanities Research Council, Principal Investigator: \$150,000, 2002-05 Study on children as witnesses with co-applicants Profs. Kang Lee & Rod Lindsay of Queen's Psychology, and collaborators Dr. John Leverette in Psychiatry & Ms. Janet Lee, Director of Kingston Victim Witness program.

- Cornell-Canada-Northern Ireland Project on Law, Gender & the Family: \$4,500 (U.S.) For academic visit to Queen's University, Belfast, Northern Ireland, March, 2004.
- Social Sciences & Humanities Research Council, Principal Investigator: \$184,000, 2005-08. Study on children as witnesses with co-applicants Prof. Rod Lindsay of Queen's Psychology, and Prof. Victoria Talwar, of McGill Psychology, with collaborators Prof. Kang Lee of the Ontario Institute for Studies in Education and Ms. Janet Lee, Director of Kingston Victim Witness program.
- Social Sciences & Humanities Research Council, Principal Investigator: \$165,000, 2008-11. Study on children as witnesses with co-applicants Prof. Rod Lindsay of Queen's Psychology, Prof. Victoria Talwar, of McGill Psychology, Prof. Kang Lee of the Ontario Institute for Studies in Education, with collaborator Ms. Janet Lee, Director of Kingston Victim Witness program.
- Social Sciences & Humanities Research Council, Co-Investigator: \$135,000, 2008-11. Study of high conflict separations; the Principal Investigator is Prof. Rachel Birnbaum (Social Work UWO), with Co-Investigators Profs Jaffe (Psychology, UWO) and McLeary (Nursing, Brock).

Research and Publications

Books

1. Bala & Clarke, *The Child and the Law* (1981), McGraw-Hill Ryerson, Toronto. (284 pages)
2. Bala, Lilles and Thomson, *Canadian Children's Law: Cases, Notes and Materials* (1982), by Butterworths, Toronto; a substantially revised version of a casebook originally used for internal teaching purposes. (Financial support from Queen's Advisory Research Committee.) (754 pages)
3. Bala & Lilles, *The Young Offenders Act Annotated* (1984), Richard De Boo, Toronto, (also translated into French and published by Yvonne Blais). (453 pages) (Funded by Ministry of the Solicitor General)
4. Bala, Hornick & Vogl eds., *Canadian Child Welfare Law: Children, Families & The State*, (1991), Thompson Educational Publishers, Toronto (339 pages). (Funding support from Canadian Research Institute for Law and The Family)
5. Corrado, Bala, LeBlanc & Linden, *Juvenile Justice in Canada: A Theoretical and Analytical Assessment*, Butterworths, Toronto, 1992 (391 pages).
6. Swan, Reiter & Bala, *Contracts: Cases, Notes & Materials* (5th edit.), Butterworths, Toronto, 1997 (1022 pages).
7. Bala, *Young Offenders Law*, Irwin, Toronto, 1997 (326 pages).
8. Vogl & Bala, *Testifying on Behalf of Children: A Handbook for Canadian Professionals* (Toronto: Thompson Educational Publishers, 2001) (124 pages)
9. Bala, Hornick, Snyder & Paetsch, *Juvenile Justice Systems: An International Comparison of Problems and Solutions* (Toronto: Thompson Educational Publishers, 2002) (270 pages)
10. Swan, Reiter & Bala, *Contracts: Cases, Notes & Materials* (6th edit.), Butterworths, Toronto, 2002 (1010 pages).
11. Bala, *Youth Criminal Justice Law* (Toronto: Irwin Law, 2003) (613 pages)

12. Bala, Zaph, Williams, Vogl & Hornick eds., *Canadian Child Welfare Law: Children, Families & The State*, 2nd edition (2004), Thompson Educational Publishers, Toronto (454 pages).
13. Swan, Reiter & Bala, *Contracts: Cases, Notes & Materials* (7th edit.), Butterworths, Toronto, August 2006 (1099 pages).
14. Fidler, Bala, Birnbaum & Kavassalis, *Challenging Issues In Child Custody Assessments: A Guide For Legal And Mental Health Professionals* (Toronto, Carswell, 2008). (385 pages)
15. Bala & Anand, *Youth Criminal Justice Law*, 2nd edition, (Toronto: Irwin Law, 2009). (755 pages)

Research & Publications funded by Government Departments & Agencies

1. Bala and Corrado, *Juvenile Justice in Canada: A Comparative Study* (1985), Ministry of the Solicitor General of Canada, published as part of the National Study on the Functioning of Juvenile Courts. (Also translated into French.) (171 pages)
2. Bala et al., *Review of the Ontario Child Abuse Register*, research for Ontario Ministry of Community & Social Services, carried out through Social Program Evaluation Group, Queen's University (released January 1988). (Also translated into French.) (168 pages)
3. Bala, *Towards a National Strategy for Combatting Child Sexual Abuse*, for Special Advisor to the Minister of Health & Welfare Canada, 1989 (44 pages).
4. Bala, Hornick & O'Brien, *Alternative Measures Programs For Native Youth: A Review and Recommendations*, Manitoba Aboriginal Justice Inquiry, 1990 (108 pages).
5. Bala, Harvey & McCormack, *The Prosecution of Sexual Offences Against Children and Bill C-15: A Case Law Research Project*, Department of Justice Canada Ottawa, 1993 (123 pages).
6. Bala, Hornick, McCall & Clarke, *State Responses to Youth Crime: A Consideration of Principles*, Department of Justice Canada, 1994. (135 pages)
7. Bala & Mahoney, "Responding to Criminal Behaviour of Children Under 12: An Analysis of Canadian Law & Practice", Department of Justice Canada, May 1994. (60 pages)
8. Bala, Weiler, Copple, Smith, Hornick & Paetsch, *A Police Reference Manual on Youth and Violence* (1994). Solicitor General of Canada and Canadian Research Institute for Law & The Family. 259 pages.
9. Hornick, Hudson & Bala, *American Responses to Juvenile Crime: A Canadian Perspective*, Department of Justice Canada and Canadian Research Institute for Law & Family, (1995) 94 pages.
10. Bala, "Legal Principles for Families, Children & Youth: A Discussion Paper", Department of Justice Canada (1995), 60 pages
11. Hornick, Bala & Bertrand, "Child Support Guidelines: Research Issues and Strategies," (Canadian Research Institute for Law & the Family for Department of Justice Canada, November 1996).
12. Bala, "Tax Changes and the Child Support Guidelines" in *Federal Child Support Guidelines: A Reference Manual* (1997, Department of Justice Canada, Ottawa), p. A-1 to A-14.

13. Bala, Bertrand, Paetsch, Knoppers, Hornick, Noel, Boudreau & Miklas, *Spousal Violence in Custody and Access Disputes: Recommendations for Reform*, (Status of Women Canada, Ottawa, Feb. 1998, with Canadian Research Institute for Law & the Family).
14. Bala, "First Impressions of the Child Support Guidelines" (Department of Justice, Ottawa Feb. 1998)
15. Hornick, Bertrand & Bala, "Divorce and the Processing of Child Support Orders" (Canadian Research Institute for Law & Family for Justice Canada, March 1998)
16. Bertrand, Hornick & Bala, "Child Support Awards Short Term-Data Collection Project: Data Degradation Report (Canadian Research Institute for Law & Family for Justice Canada, March 1998).
17. Loo, Bala, Clarke & Hornick, "Reporting and Classification of Child Abuse in Health Care Settings" (Ottawa, Health Canada, 1999).
18. Hornick, Bertrand & Bala, "The Survey of Child Support Awards: Final Analysis of Pilot Data and Recommendations for Continued Data Collection" (Canadian Research Institute for Law & Family, for Justice Canada, April 1999)
19. Miklas & Bala, "Assessing the Role of Offices of Child Advocacy in Responding to Institutional Child Abuse," Law Commission of Canada, July 1999.
20. Szabo, Hornick, Paetsch, Coleman, Woronka, O'Sullivan, Bala, Bertrand & Craig, *An Investigative Guide for Sexual Offences, 2nd edition*, Royal Canadian Mounted Police, 2000.
21. Bertrand, Hornick & Bala, "The Survey of Child Support Awards: Preliminary Analysis of Phase II Data (October 1998 - May 1999)" (Canadian Research Institute for Law & Family for Department of Justice Canada, January 2000)
22. Bertrand, Hornick Paetsch & Bala, "The Survey of Child Support Awards: Interim Analysis of Phase 2 Data (October 1998 - March 2000)" (Canadian Research Institute for Law & Family for Department of Justice Canada, September 2000)
23. Anand, Binavince, Singh, & Bala, *Discussion Paper: Practices and traditions of Ethnocultural and Religious Communities in Custody and Access Issues*, for the Department of Justice, Canada by Minority Advocacy & Rights Council (submitted February 2001).
24. Bala, Paetsch, Trocme, Schuman, Tanchak & Hornick, *Allegations of Child Abuse in the Context of Parental Separation: A Discussion Paper*, Department of Justice Canada, Research Report, 2001-FCY-4E, 2001.
25. Fagnan & Bala, *Canadian Judges' Handbook on Child Witnesses* (Edmonton, Alta: Alberta Court of Queen's Bench, December, 2001) (Under the Direction of Justices Cooke & Trussler).
26. Bertrand, Paetsch, Bala & Hornick, "A Profile of Legal Aid Services in Family Law Matters in Canada, (Canadian Research Institute for Law & Family for Department of Justice Canada, completed January 2002, posted 2006).
27. Bala & Ringseis, "Review of the Yukon *Family Violence Prevention Act*," (for Yukon Territorial government on contract with Canadian Research Institute for Law & the Family) (July 2002).
28. Bertrand, Hornick Paetsch & Bala, "The Survey of Child Support Awards: Interim Analysis of Phase 2 Data Through January 31, 2002" (Canadian Research Institute for Law & Family for Department of Justice Canada, 2003)

29. Bertrand, Paetsch, Hornick & Bala, "The Survey of Child Support Awards: An Examination of Selected Provincial/Territorial Data" (Canadian Research Institute for Law & Family for Department of Justice Canada, March 2003)
30. Fagnan & Bala, *Canadian Judges' Handbook on Child Witnesses, 2003 edition* (Edmonton, Alta: Alberta Court of Queen's Bench, July, 2003) (with the support of Justices Cooke & Trussler)
31. Whitehead, Bala, Leschied & Chiodo, *A New Model for Child & Youth Advocacy in Ontario*, (Ontario Ministry of Children and Youth Services, July 2004)
32. Bertrand, Paetsch, Bala & Hornick, *The Child-Centred Family Justice Strategy: Baseline Data From Family Law Practitioners*, (Department of Justice Canada, December 2005)
33. Bertrand, Hornick Paetsch & Bala, *Phase 2 of the Survey of Child Support Awards: Final Report* (Department of Justice Canada, March 2005)
34. Jaffe, Crooks & Bala, *Making Appropriate Parenting Arrangements in Family Violence Cases: Applying the Literature to Promising Practices* (Department of Justice Canada, 2006)
35. Bala, Duvall-Antonacopoulos, MacRae & Paetsch, *An International Review of Polygamy: Legal and Policy Implications for Canada* (Ottawa: Status of Women Canada, 2006)
36. Bala & Leschied, *A Report on Court-ordered Assessments in Child Welfare Proceedings in Ontario: Review and Recommendations for Reform* (Ontario Ministry of Children & Youth Services, 2006)
37. Paetsch, Bertrand & Bala, *Survey on the Practice of Family Law in Canada, 2004-2006* (Canadian Research Institute for Law & the Family, Department of Justice Canada, 2006)
38. Paetsch, Bertrand, Young, Monna, Bala & Hornick, *High Conflict Intervention Programs in Alberta: A Review and Recommendations* (Canadian Research institute for Law and the Law, Alberta Justice, 2007)
39. Bala & Trocme, *Child Protection Issues and Forensic Pediatric Pathology*, (Goudge Commission, Ontario, November 2007)
40. Bala, Paetsch, Bertrand & Thomas, *Testimonial Support Provisions for Children and Vulnerable Adults (Bill C-2): Case Law Review & Perceptions of the Judiciary*, Canadian Research Institute for Law & the Family, for the Department of Justice Canada (forthcoming 2010).
41. Paetsch, Bertrand, Walker, MacRae & Bala, *Consultation On The Voice Of The Child At The 5th World Congress On Family Law And Children's Rights*, (National Judicial Institute and Canadian Research Institute for Law and the Family, for Department of Justice Canada, 2009).

Non-Governmental Institutes, Agencies & Foundation Publications

1. Bala, *Bill C-15: New Protections for Children - New Challenges for Professionals* (1988), Institute for the Prevention of Child Abuse, Toronto (28 pages).
2. Bala, Fountain & Perron, *Youth & The Charter of Rights*, Canadian Youth Foundation (1988) (70 pages).
3. Stewart & Bala, *Understanding Criminal Prosecutions for Child Sexual Abuse* (1989), Institute for the Prevention of Child Abuse, Toronto, (66 pages).
4. Bala, *Child Sexual Abuse and Canadian Volunteer Organizations* (1989), for Canadian Council of National Youth Serving Organizations (29 pages).

5. Vogl & Bala, *Testifying on Behalf of Children: The Professional Witness in Court* (1989), Institute for the Prevention of Child Abuse, Toronto (77 pages).
6. Bala, *Update: Bill C-15*, Issues no. 1-3, Institute for the Prevention of Child Abuse, Toronto, Jan. 1990, Oct. 1990, Oct. 1991.
7. Vogl & Bala, *Testifying on Behalf of Children: The Professional Witness in Court* (1992, Second Edition), Institute for the Prevention of Child Abuse, Toronto (81 pages).
8. Bala, *Update: Child Sexual Abuse & the Law*, Issue no. 4, Institute for the Prevention of Child Abuse, Toronto, Oct. 1992 (35 pages).
9. Bala & Miklas, *Rethinking Judicial Decision-Making About Children: Is the Best Interests of the Child Really in the Best Interests of Children?* Policy Research Centre for Children, Youth & Families, Toronto, Feb. 1993 (140 pages plus 42 pages of commentary).
10. Bala & Vogl, *Responding To Abuse & Neglect of The Unborn Child: Legal & Social Issues*, Institute for The Prevention of Child Abuse, Toronto, 1993. (67 pages)
11. Bala, *Update: Child Abuse & The Law*, Issue no. 5, Institute for the Prevention of Child Abuse, Toronto, Nov. 1993.
12. Bala, "Legal Responses to Child Abuse & Neglect in Canada: Progress & Controversy", in *Proceedings of An International Seminar on the Prevention of Child Abuse*, Institute for the Prevention of Child Abuse, Toronto, 1993, 89-124.
13. Bala, Harvey & Vogl, *Dilemmas of Disclosure* (Oct. 1994) Institute for the Prevention of Child Abuse, Toronto. (105 pages)
14. Bala, *Update: Child Abuse & the Law - 1994*, Institute for the Prevention of Child Abuse, Toronto (94 pages)
15. Bala, "Towards a First Nations Youth Restorative Justice & Healing System" Saskatchewan Federation of Indian Nations, January 1996
16. Bala, "Judicial Education for Family Law Judges of the Ontario Provincial Division: A Discussion Paper" (Ontario Association of Family Law Judges) September 1998 (funded contract)
17. Bailey & Bala, *Does Federal and Ontario Legislation Comply With the United Nations Convention on the Rights of the Child?* Child Welfare League of Canada: Ottawa, June 1999
18. Bala, "The Constitutional Right to Legal Representation in Family Law Proceedings", in *Making the Case: The Right to Publicly-Funded Legal Representation in Canada* (Ottawa: Canadian Bar Association, Feb. 2002), p57-82 (also in French).
19. Gough, Blackstock & Bala, Jurisdiction and funding models for Aboriginal Child and Family Service Agencies, Centre of Excellence for Child Welfare, Faculty of Social Work, University of Toronto (2005)
20. Bala, "The Canadian Experience" in B. Smythe, N. Richardson & G. Soriano, *Proceedings of the International Forum on Family Relationships in Transition* (Melbourne Au., Australian Institute of Family Studies, 2006), 137-155 (revised version of conference speech).
21. N. Bala, P.J.Carrington, & J.V. Roberts, *Youth Justice Reform in Canada: Reducing Use of Courts and Custody Without Increasing Youth Crime* (Prepared for the Independent Commission on Youth Crime and Anti-social Behaviour in England and Wales, a body organized by the Police Foundation.)

Articles - Scholarly Journals (Refereed)

1. Bala, "The Consequences of Separation for Unmarried Couples: An Analysis of Canadian Developments" (1980), 6 *Queen's Law Journal* 72-149; revised version of LL.M. Paper.
2. Bala, "The Children's Act: A Consultation Paper - Child Welfare Reform in Ontario" (1983), 4 *Canadian Journal of Family Law* 233-243.
3. Bala & Redfearn, "Family Law and the 'Liberty' Interest: Section 7 of the Canadian Charter of Rights" (1983), 15 *Ottawa Law Review* 274-310, later appeared as book chapter in Knoppers and Connell-Thouez eds., *Contemporary Trends in Family Law* (Carswell, 1984).
4. Bala, "Judicial Discretion and Family Law Reform in Canada" (1986), 5 *Canadian Journal of Family Law* 15-54.
5. Bala, "Family Law in Canada and the U.S.A.: Different Visions of Similar Realities" (1987), 1 *International Journal of Law and the Family* 1-46; slightly revised version appears in Hughes & Pask eds., *National Themes in Family Law*, Carswell, 1988.
6. Bala, "Domestic Contracts and The Supreme Court Trilogy: A Deal is a Deal" (1988), 13 *Queen's Law Journal* 1-61.
7. Bala, "Recognizing Spousal Contributions to the Acquisition of Degrees, Licences and Other Career Assets Towards Compensatory Support" (1989), 8 *Canadian Journal of Family Law* 23-60.
8. Bala, "Double Victims: Child Sexual Abuse and the Criminal Justice System" (1990), 15 *Queen's Law Journal* 3-32.
9. Bala, "Dealing With Violent Young Offenders: Transfer to Adult Court & Bill C-58" (1990), 9 *Canadian Journal of Family Law* 11-37.
10. Bala, "What's Wrong With Y.O.A. Bashing? What's Wrong With the Y.O.A.? Recognizing the Limits of the Law" (1994), 36 *Can. J. Criminology* 247-270. Funding support from Queen's Advisory Research Council.
11. Bala, "The Evolving Canadian Definition of the Family: Towards A Pluralistic and Functional Approach" (1994), vol. 8:3 *International Journal of Law & The Family* 293-318.
12. Bala, "The 1995 Y.O.A. Amendments: Compromise or Confusion?" (1995), 26 *Ottawa Law Review* 643-676.
13. Walter, Isenegger & Bala, "'Best Interests' in Child Protection Proceedings: Implications & Alternatives" (1995), 12 *Canadian Journal of Family Law* 367-439.
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62. Bala, "Records, Confidentiality, Disclosure of Information and Reporting Abuse", Canadian Institute Program on Institutional Sexual Abuse, Toronto, April 24, 1995.
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 92. Bala, "Spouse Abuse & Children: Understanding Social Contexts and Legal Responses," conference sponsored by Yukon Department of Justice, Whitehorse, June 11, 2002.
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 100. Bala, "Dealing with Child & Adolescent Offenders Outside of Youth Court: The Canadian Experience," International Symposium on Juvenile Measures Alternative to Prosecution, City University of Hong Kong, Feb. 24-25, 2003.
 101. Bala & Ramikrishnan, "The Competency Inquiry - A Child's First Minutes in Court: Legal and Psychological Issues," National Judicial Institute, Criminal Law Program, Quebec City, March 20, 2003.
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 - Alberta Solicitor General, "Future Directions in Youth Justice," Banff, Sept. 22, 2003
 - 107 - Ontario Court of Justice, Judicial Education Program (North Region), Sault Ste. Marie, Oct 10, 2003
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119. Bala & Harris, "Judicial Control of Collaborative Family Law Separation Agreements Good Faith, Non-disclosure, *Miglin*, the *Guidelines* & Best Interests," Law Society of Upper Canada Program on *Collaborative Family Law*, November 12, 2004 (ILN Ontario-wide).
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128. Bala, "Redefining Marriage in Canada & the U.S.A.: Moving in the Same Direction But at Different Speeds," International Society of Family Law World Conference, Salt Lake City, Utah, July 22, 2005.
129. Bala, "Psychological Evidence & Best Interests Decisions in Family Law Cases," Law & Psychology Colloquium, University College London (England), July 12, 2005.
130. Bala, "The Debates About Same-sex Marriage in Canada & the United States: Controversy Over the Evolution of a Fundamental Social Institution," Federal Marriage Protection Amendment Symposium, Brigham Young University, Provo, Utah, September 9, 2005 (revised version published in *BYU J PubL*, 2006)
131. Bala, "Assessments & The Law of Expert Evidence in Family Law Cases in Manitoba," National Judicial Institute Family Law Seminar, Winnipeg, Sept. 23, 2005.
132. Bala, "Dispositions & Sentencing Under the *Y.C.J.A.*: A Review of Principles & Case Law," Court of Appeal Education Seminar of National Judicial Institute, Fredericton, New Brunswick December 9, 2005.
133. Bala, "'Standing in the Place of a Parent' & Child Support Guidelines s. 5: 'The Nature of the Relationship & Child Support Obligations,'" National Judicial Institute, Family

- Law Program, Ottawa, Feb 8-9, 2006.
134. Bala, "Who is A Parent? Standing in the Place of a Parent & Child Support Guidelines s. 5," Law Society of Upper Canada, Special Lectures, Toronto, April 3, 2006.
 135. Bala & Boyle, "Open Courts, the Media & the Charter s.2(b): Cases Involving Children and Youth, Ontario Court of Justice Education Program, Niagara-on-the-Lake, May 24, 2006.
 136. Bala, Mitnick & Trocme, "Allegations of Sexual Abuse When Parents have Separated" & Bala & Duvall-Antonacouplous, "The Controversy Over Expert Evidence in Family Law Cases in Canada, the U.S.A. and U.K.," National Family Law Program, Kananaskis, Alberta, July 10-12, 2006.
 137. Bala, "Responding to Young Offenders: Y.C.J.A Sentencing – Principles and Case Law", Ontario Court of Justice, Regional Education Programs in Kingston, Oct. 12, 2006.
 138. Bala & Hogan, "Keeping an Eye Out for the Other Spouse: Challenges to Domestic Contracts Under the F.L.A. s. 56(4)," Ontario Bar Association Program on Domestic Contracts, Toronto, November 14, 2006.
 139. Bala, Jaffe & Crooks, "Spousal Violence & Child-Related Cases: Challenging Cases Requiring Differentiated Responses," Judicial Development Institute of the Ontario Court of Justice, Toronto, January 18, 2007.
 140. Bala, "Responding to Young Offenders: Diversion, Pre-Trial Detention and Sentencing Under the Y.C.J.A.," National Judicial Institute, on-line Youth Justice Course, March 2007.
 141. Bala, "*Mohan*, Assessments & Expert Evidence: Understanding the Family Law Context," Osgoode Hall Law School Professional Development CLE Program on *Experts in Family Law Proceedings*, Toronto, April 20, 2007.
 142. Bala, Fidler, Goldberg & Houston, "Alienated Children & Enforcing Access: Legal Responses," Family Law Summit, Law Society of Upper Canada, May 10, 2007.
 143. Bala & Thomas, Who is a "Parent"? "Standing in the Place of a Parent" & the *Child Support Guidelines* s. 5, National Judicial Institute, Manitoba Queen's Bench Education Program, Winnipeg, Sept. 18, 2007.
 144. Bala, "Youth as Offenders and Victims in the Criminal Justice System: A Charter Analysis – Recognizing Vulnerability," National Conference of the Charter and Criminal Justice in Canada, Osgoode Hall Law School CLE, Toronto, Sept. 29, 2007.
 145. Bala, "Responding to Young Offenders: Diversion, Detention & Sentencing Under the Y.C.J.A.," Ontario Court of Justice, Central Region Education program, Huntsville, Ont. Oct 18, 2007.
 146. Bala, "The History and Future of the 'Legal Family' in Canada," National Judicial Institute Program, *Emerging Issues: Why Gender Equality Still Matters*, Toronto, November 29, 2007. [SSRN Research Paper]
 147. Bala, Canada's Youth Criminal Justice Act after Five Years: Changing Responses to Young Offenders, British Columbia Youth Justice Provincial Forum (B.C. Ministry of Children and Families)Vancouver, B.C., Feb. 6, 2008.
 148. Bala, "Judicial Notice, Common Sense, Expert Evidence and Assessments: Understanding the Family Context," National Family Law Program, National Judicial Institute, Quebec City, Feb. 13, 2008.
 149. Bala, "Principles for Adult Sentencing Under the Y.C.J.A.:The Most Severe Sentence for the Most Serious Young Offenders", Criminal Justice Seminar, National Judicial

- Institute, Victoria B.C., March 28, 2008.
150. Bala & Feehan, "Child Support for Adult Children: When Does Economic Childhood End?" Ontario Bar Association, *Family Law and the Child*, Toronto, April 23, 2008.
 151. Bala, Expert Evidence, Assessments and Judicial Notice: Understanding the Family Context, Family Law Summit of Law Society of Upper Canada, Toronto, June 11, 2008.
 152. Maur & Bala, "Spousal Support: Entitlement & Review Orders," National Family Law Program of the Federation of Law Societies, Deerhurst, Ontario, July 15, 2008 .
 153. Bala, "Child Support for Adult Children: When Does Economic Childhood End?," Frontenac Law Association Legal Conference, Gananoque, Oct. 3, 2008 (presented by Mary Jo Maur).
 154. Bala, "*R v D.B.*: The Constitutionalization Of Adolescence," Annual Constitutional Law Conference, Osgoode Hall Law School, April 17, 2009.
 155. Bala, Hunt & McCarney, "Alienation – Myths, Realities and Uncertainties: Canadian Cases 1989-2009," Family Law Seminar of British Columbia Supreme Court & National Judicial Institute, Kelowna, B.C., May 20, 2009.
 156. Bala, Evans & Bala, Hearing the Voices of Children in Canada's Criminal Justice System: Recognizing Capacity and Facilitating Testimony, 5th World Congress on Family Law & Children's Rights, Halifax, August 25, 2009.
 157. Birnbaum & Bala, "Towards the Differentiation of "High Conflict" Families: An Analysis of Social Science Research and Canadian Case Law," 5th World Congress on Family Law & Children's Rights, Halifax, August 24, 2009.
 158. Bala, "Why Canada's Prohibition of Polygamy is Constitutionality Valid and Sound Social Policy," Canadian Constitutional Foundation, 3rd Annual Law Conference, Toronto, Oct. 3, 2009.
 159. Bala & Epstein, "Summary of Access to Justice Reforms for Ontario Families" at Ontario Bar Association program on Creating a Family Law Process That Works, Toronto, Nov. 21-23, 2009.
 160. R Birnbaum & N. Bala, "Judicial Interviews With Children In Custody And Access Cases: Comparing Experiences In Ontario And Ohio," Ontario Court of Justice, Family Education Program, Toronto, Jan. 20, 2010.
 161. Bala, "Alienation – Courts Ordering Therapeutic Intervention," National Judicial Institute, Family Law Seminar, Toronto, Feb. 3, 2010. (also published in *Ontario Family Law Reporter*).

Professional and Academic Lectures, Presentations & Panels (No original written paper)

1. Renfrew County Children's Aid Society, Training Program, Speaker, Pembroke, February 1978.
2. Leeds & Grenville Children's Aid Society, Training Program, Speaker, Brockville January 1979.
3. Kingston Children's Aid Society, Training Programs, Speaker, September 1981.
4. Canadian Congress on the Prevention of Crime, Panellist on Young Offenders Act, Winnipeg, July 1981
5. Frontenac Family Law Association, On Family Law and the Charter, March 1982, Kingston

6. Frontenac Family Law Association, on Unmarried Cohabitation, February 1982, Kingston.
7. National Training Program on Young Offenders Act, Panelist, Ottawa, January 1983
8. Ontario Family Court Judges Judicial Development Institute, Speaker on Young Offenders, Toronto, February 1983 (presentation based on book)
9. Kingston Children's Aid Society, Training Program, September 1983
10. Ontario Alliance for Children, Conference on Child & Family Services Act, speaker, Toronto, January 1984
11. Ontario Family Court Judges Educational Institute, Speaker on Young Offenders Act, March 1984 (presentation based on book)
12. Hamilton Law Association, Speaker on Young Offenders Act, May 1984 (presentation based on book)
13. Kingston Inter-Agency Council for Children, Conferences on Child Abuse, March 1984 & May 1984
14. National Associations Active in Criminal Justice, Speaker at Annual Meeting, Ottawa, November 1984
15. Ontario Family Court Judges Judicial Development Institute, Speaker on Young Offenders Act, Kingston, February 1985
16. National Consultation on United Nations Congress on Crime, Speaker, Ottawa, March 1985
17. Frontenac County Law Association, on Young Offenders Act, April 1985
18. Canada - USA Law Institute, Family Dispute Resolution Conference, Speaker on Mediation of Property Disputes, London, April 1985; remarks formed basis of a book chapter
19. Ontario Association of Family Court Clinics Conference, speaker on Due Process and the Young Offenders Act, London, May 1986
20. Queen's Law Union, speaker at "Stones of Law Conference", on young offenders and alternative measures, Kingston, April 1986
21. Queen's Law Union, speaker at Young Offenders Conference, Kingston, March 1987
22. London Family Court Clinic Conference, speaker on Legal Developments and the Young Offenders Act, London, March 1987
23. Ontario Association of Family Court Clinics Conference, speaker on Bill C-15 (child sexual abuse), Kingston, April 1987
24. Ontario Social Development Council, Young Offenders Act Dispositions Conference, speaker on Dispositional Philosophy, Toronto, May 1987
25. Saskatchewan Council on Child & Youth, Panellist and Workshop Leader at "Beyond Badgley" Conference (child sexual abuse), Regina, May 1987
26. Ontario Centre for the Prevention of Child Abuse, workshop leader at Conference - Allegations of Child Abuse: Legal Issues in Civil and Criminal Proceedings, Toronto, June 1987
27. Ontario Centre for the Prevention of Child Abuse, Interdisciplinary Conferences on Bill C-15, Keynote Speaker, Pembroke, Kingston, Toronto, February 1988. Substantially revised version of speech published by Institute for the Prevention of Child Abuse (1988)
28. Law Society of Upper Canada, Young Offenders Program, panelist in session on "Current Legal Issues", Toronto, February 1988 (previous paper included in Conference materials)

29. Alberta Institute of Research and Reform, panelist at review of proposals on unmarried cohabitation, Calgary, March 1988
30. Law Society of Upper Canada, program on Child Sexual Abuse, presentations on Bill C-15 and Child Abuse Register, Toronto, April 1988 (previous paper included in materials)
31. Ontario District Court Judges Association, speaker at Education Program on Bill C-15, Toronto, May 1988 (previous paper included in materials)
32. Ontario Association of Family Court Clinics Conference, speaker on Young Offenders Act, Ottawa, May 1988
33. Ontario Council of Children's Aid Society Counsel, presentation of Child Abuse Register Review, Toronto, June 1988 (previous paper distributed)
34. American Bar Association, Juvenile Justice Section, Panel discussion on approaches to juvenile justice, Toronto, August 1988 (previous paper distributed)
35. Law Society of Upper Canada, Bill C-15 and Child Sexual Abuse, program co-chair and panellist, Kingston, September 1988 (previous papers included in materials)
36. Atlantic Child Welfare Conference, key-note speaker on Bill C-15, Halifax, September 1988 (previous paper distributed)
37. Commonwealth Magistrates Association Conference, speaker on Family Law, Kingston, September 1988
38. Institute for Prevention of Child Abuse Conference, panellist and workshop leader on legal issues related to child abuse and Child Abuse Register, Toronto, October 1988 (previous paper included in Conference materials)
39. Canadian Council on Children and Youth, Consultation on United Nations Convention on Rights of the Child, Speaker on Child Pornography and Juvenile Prostitution, Ottawa, March, 1989
40. Kidsline Training Program, Speaker on Legal Issues, Canadian Children's Foundation, Toronto, May 1989
41. "Young Offenders: A Northern Perspective", Panellist on Transfer to Adult Court, Sudbury, May 1989
42. Preparing the Professional for Court & Bill C-15 sessions at Institute for Prevention of Child Abuse Conference, Toronto, September 1989 (Previous papers included in conference materials)
43. Canadian Bar Association, Family Law Section, Calgary Alberta, October 1989.
44. Canadian Bar Association Young Offenders Section, Calgary, on proposed amendments to Young Offenders Act, December 1989
45. Family Court Judges, Calgary, Young Offenders: National Issues, December 1989
46. Children's Hospital, Calgary, Testifying on Behalf of Children, December 1989
47. Ontario Council for Leadership in Education Administration, Correctional Educators Conference, Young Offenders and Transfer to Adult Court, Toronto, March 1990
48. Ontario Association of Distress Centres, Legal Issues Related to Volunteers, Kingston, May 1990
49. Frontenac Family Law Association, Allegations of Social Abuse in Custody Cases, Kingston, May 1990
50. Prince Edward Island Community Legal Information Association, United Nations Convention on the Rights of the Child, Charlottetown, December 1990
51. Ontario Police College, Youth Justice System, 1 day lectures, 1990, 1991, 1992

52. Canadian Conference of Catholic Bishops, on Child Sexual Abuse and the Catholic Church, Ottawa, January 1991
53. Correctional Staff College, on Testifying in Transfer Hearings, Kingston, April 1991 (materials distributed)
54. Ontario Association of Family Court Clinics Conference, "The Expert Witness Revisited: New Challenges", Kingston, April 1991
55. Kingston Area Young Offenders Community Service Workers, "Alternative Measures and the Young Offenders Act", Kingston, May 1991
56. First North American Conference on Child Abuse and Neglect, Panelist on Legal Issues related to False Allegations of Sexual Abuse, Toronto, June 1991
57. Ontario Association of Family Mediators, Panelist on Legal Issues & Mediation, Hamilton, June 1991
58. Canadian Psychological Association, Presentation on The Psychologist As An Expert Witness in Child Related Proceedings, Calgary, June 1991 (prior papers distributed)
59. Institute for the Prevention of Child Abuse, "Testifying on Behalf of Children", all day workshop with R. Vogl, October 29, 1991, Toronto (Prior publication distributed)
60. Continuing Medical Education Program, Queen's University, "Health Professionals and Child Abuse: Legal Issues", Kingston, Mar. 11, 1992
61. John Howard Society, Young Offenders Dispositions, Mar. 13, 1992
62. National Judicial Education Institute, "Canadian Family Law", Program for Eastern European Judges, September 24, 1992, Ottawa
63. Institute for Prevention of Child Abuse Conference, Chair of Law Reform Program & co-presenter at Workshop on Testifying on Behalf of Children, Toronto, October 1992 (previous publications distributed at Conference)
64. Frontenac County Child Abuse Committee, "Child Sexual Abuse & Law Reform", November 6, 1992, Kingston
65. Continuing Medical Education Program, Queen's University, "Adult Survivors of Child Sexual Abuse: Legal Issues", Kingston, Feb. 12, 1993
66. Ontario Child Abuse Register Hearing Officers, "The Reform of the Child Abuse Register", Toronto, April 19, 1993
67. Canadian Association for Law & Society, "Young Offenders Issues", Ottawa, June 7, 1993. Panelist. (Learned Societies Meeting)
68. Canadian Bar Association - Ontario. Family Law Section, "Reform of Custody Laws", September 22, 1993, Toronto
69. Institute for the Prevention of Child Abuse - International Prevention of Child Abuse & Neglect Seminar, September 28, 1993, Toronto (publication listed above)
70. Institute for the Prevention of Child Abuse, Conference, "Screening for Child Abuse Using the Register and Criminal Records", October 24, 1993
71. Canadian Coalition on the Rights of the Child & Canadian Children's Bureau, "Legal Reform and Corporal Punishment: Amending s. 43 of the Criminal Code", Ottawa, January, 1994
72. Department of Justice, Reform of the Young Offenders Act, Ottawa, February 24-25, 1994 (previous paper distributed)
73. Canadian Bar Association - Ontario, Family Law Section, "New Definitions of the Family", Kingston, March 29, 1994 (previous paper distributed)

74. United Nations Convention on the Rights of the Child Conference, "Children of Divorce", "Defining Best Interest" & "Juvenile Justice", University of Victoria, June 20-21, 1994
75. Hastings County Law Association, "Reform of the Young Offenders Act", Belleville, October 14, 1994; and Frontenac County Law Association, Kingston, October 27, 1994
76. Institute for the Prevention of Child Abuse, Annual Conference, on "Dilemmas of Disclosure" and "Learning from Judicial Decisions", Toronto October 21, 1994
77. Better Beginnings for Kingston Children, "Child Abuse Reporting & Confidentiality", November 21, 1994.
78. University of Ottawa, Human Rights Research & Education Centre, Strategies to Prevent Youth Crime Conference, "Canada in an International Comparison of Youth Crime Responses", Ottawa, March 18, 1995; broadcast on Canadian Parliamentary Affairs Channel. Revised version published
79. Health Canada and Institute for Prevention of Child Abuse, Best Practice Symposium on the Sexual Abuse of Young Children, on "Reform of the Justice System to Accommodate Young Children", Toronto, March 30, 1995.
80. Annual Meeting of Canadian Research Institute for Law & Family, "Juvenile Justice in the United States: A Comparative Perspective", Lake Louise, Alta., May 6, 1995.
81. "The Clinician in Court", Institute for Prevention of Child Abuse, "Searching for the Truth" Conference, Toronto, May 31, 1995 (publication distributed)
82. "Young Offenders under 12", Earls Court Child & Family Service Centre, Toronto, October 25, 1995
83. "Spanking Kids: Does it Work? Is it Right?", panelist at St. Lawrence Centre Forum Toronto, October 25, 1995.
84. "Family Mediation in Canada" at Family Law Reform in England Consultation of BT Forum, Leeds Castle, England, January 29 & 30, 1996 (abstract distributed)
85. "Legal principles for Families, Children & Youth", Department of Justice Canada, Ottawa, March 1, 1996 (Discussion of paper listed above)
86. "The 1995 Young Offenders Act Reforms", Law Union, University of Ottawa, March 2, 1996. (Prior article distributed)
87. "Child Support Guidelines", Frontenac County Law Association & Queen's University Family Law Continuing Education Program, Kingston, April 29, 1996
88. "Towards a First Nations Youth Justice Strategy", Saskatchewan Federation of Indian Nations", Saskatoon, October 7, 1996. (Prior paper & draft brief distributed)
89. Canadian Bar Association & Law Society of Upper Canada, "Child Support Guidelines Program", Kingston, November 11, 1996
90. "The Child Support Guidelines Are Coming-With a Few Changes", Essex County Family Law Association, Windsor, February 25, 1997
91. "Offending Behaviour by Children Under the Age of 12" at Canadian Research Institute for Law & the Family, Annual Meeting, Lake Louise Alta. May 3, 1997
92. "Spousal Abuse and Children of Divorce in Canada: A Differentiated Approach" at Second International Conference on the Effects of Domestic Violence on Children, London Ontario June 4 & 5, 1997 (Prior article distributed, presentation written as paper and published as book chapter)

93. "Reforming the Youth Justice System: Effective Change or Responding to Public Misperceptions," Panellist at Probation Officers Association of Ontario Annual Meeting, Richmond Hill, Ontario, November 4, 1997
94. "Responding Effectively to Youth Crime," Dignity Foundation, Calgary Alberta, November 28, 1997
95. The United Nations Convention and the Best Interests of the Child, Defence for Children International Symposium, Toronto, March 7, 1998
96. The Politics and Proposals for the Reform of Canada's Custody and Access Laws, at Canadian Research Institute for Law & the Family, May 2, 1998, Lake Louise Alberta
97. Canada's Youth Justice System, at Youth Justice Conference: International Comparisons, sponsored by Department of Justice Canada and Canadian Research Institute for Law & Family, Ottawa, May 8 & 9, 1998
98. Juvenile Justice: An International Perspective at the International Association of Women Judges Conference, Ottawa, May 23, 1998
99. The Reform of Canada's Custody & Access Laws, at Middlesex Family Law Association, London, Ontario, May 29, 1998
100. Children's Law and the Early Childhood Educator, at Ontario Early Childhood Education Association Meeting, Kingston, May 30, 1998
101. Child Support Guidelines Monitoring Pilot Project, presentation of two papers with Hornick & Bertrand at Federal Provincial Conference of Research Sub-Committee on Child Support Guidelines, Ottawa, June 2, 1998
102. Young Offenders Act: Overview & Update, Ontario Provincial Division Judges Education Seminar, Kingston, October 29, 1998
103. Canadian Research Institute for Law & the Family, Annual meeting, presentation on "Allegations of Abuse in the Context of Parental Separation" May 1, 1999, Lake Louise, Alberta. (Report on publication in progress cited above)
104. Status of Women Canada, "Spousal Abuse in Custody and Access Disputes: Recommendations for Reform", March 26 1999, Ottawa.
105. Panelist at discussion of proposed new Youth Criminal Justice Act, Ontario Provincial Court Judges Education Program, Niagara Falls, Ontario, May 14, 1999.
106. Ontario Children's Lawyer Education Programs, "Children's Law at the End of the Century: Themes and Challenges," Toronto & Sault Ste. Marie, Ontario June 7 & 8, 1999. Co-leader of 1 day education program for lawyers and social workers.
107. Canadian Association of Chiefs of Police, 1999 Annual Meeting, Presentation on offending by children under 12, Hamilton, August 23, 1999
108. Ontario Family Law Judges Education Program, Spousal Abuse, Restraining Orders & Recognizances, Muskoka, October 1, 1999
109. Royal Canadian Mounted Police, Restorative Justice Symposium, Moderator on "Restorative Justice and the Hidden Power Play in Communities," Ottawa, March 25, 2000
110. Canadian Research Institute for Law & Family, Annual Meeting, "The Legal Competence of Child Witnesses: Assessing Present Practices and the Need for Reform," Lake Louise Alberta, May 6, 2000
111. Family Law Section, Canadian Bar Association- Ontario, "*Stare Decisis* & the Best Interests of the Child," Toronto, May 8, 2000

112. National Family Law Program (Federation of Law Societies of Canada) "Interviewing Children: Ascertaining Facts & Learning Wishes" (prior articles distributed) & "Reforming the Child- Related Provisions of the Divorce Act" (prior article distributed), St. John's Nfld, July 11 & 12, 2000
113. "'Getting the Truth:' Legal and Psychological Issues in Interviewing Children and Youths," Symposium on Profiling and Interviewing Young People, Chatham, Ontario, August 29, 2000 (prior papers distributed)
114. Thunder Bay Law Association, Continuing Education Program, October 21, 2000; presentations on Charter & Family Law; abuse allegations when parents separate; reforming the child related provisions of the *Divorce Act* (prior papers distributed)
115. Probation Officers Association of Ontario, member of panel at plenary session on youth justice issues, Toronto, November 9, 2000
116. Probation Officers meeting, Ontario East Central, the proposed *Youth Criminal Justice Act*, Kingston, November 24, 2000.
117. Canadian Research Institute for Law & Family, Annual Meeting, Canada's New Youth Criminal Justice Act: Law Reform in A Global Context, Lake Louise, Alberta, May 5, 2001.
118. "Children as Victims & Witnesses: Improving the Criminal Justice System," National Joint Committee of Senior Justice Officials, Sault Ste. Marie, Ontario, May 24, 2001
119. "Testifying In Court on Behalf of Children", Workshop at International Conference on Children Exposed to Domestic Violence, London Ont., June 8, 2001
120. High Conflict Parental Separation and Child Protection (day long interagency workshop), Kingston Children's Aid Society, June 12, 2001
121. "The Charter, the Convention and Kids: Lots of Rhetoric But Not Many Rights", Canadian Bar Association Ontario- Constitutional and Civil Liberties Section, Toronto, June 13, 2001
122. Legal Context for the Child Competency Inquiry, International Society for Applied Research on Memory and Cognition, Kingston June 14, 2001
123. Children as Witnesses in Canada's Criminal Justice System, in Child Witness Symposium at Canadian Psychological Association Annual Meeting, Quebec City, June 23, 2001
124. Charter & Child Protection; Sexual Abuse Allegations When Parents have Separated; Interviewing Children - Legal and Psychological Issues, Ontario Association of Counsel for Children's Aid Societies, Kingston, Ontario, September 13, 2001.
125. A Legal & Psychological Critique of the Present Approach to the Assessment of the Competence of Child Witnesses (with Victoria Talwar), World Congress of Family Law and the Rights of Children, Bath England, Sept. 22, 2001
126. Interviewing Children: Legal and Psychological Issues (with K. Lee and J. Lee), Ontario East Region Crown Attorneys Education Program, Kingston, October 5, 2001
127. Youth Justice Reform, Ontario High School Teachers of Law Annual Meeting(OBEA), Toronto, April 25, 2002
128. "Canada's Youth Justice Reform in an International Context," Annual Meeting of Canadian Research Institute for Law & the Family," May 4, 2002, Lake Louise, Alberta.
129. Children as Witnesses (with Prof. Lee) & Youth Justice Reform: The Role of the Judge, Youth Justice Reform: The Role of the Judge &, May 10, 2002, Liscomb Lodge, Nova Scotia

130. Bala, "Children as Witness: Psychological Research on Competence and Credibility", conference sponsored by Yukon Department of Justice, Whitehorse, June 11, 2002.
131. Commentator on: "Australia's Custody Law Reform & What We Can Learn from That," National Family Law Program of the Federation of Law Societies, Kelowna, British Columbia, July 16, 2002.
132. "The Youth Criminal Justice Act: An Introduction for Child Welfare Agencies," Ontario Association of Children's Aid Societies Consultation, Toronto, Dec. 3, 2002.
133. "An Introduction to the Youth Criminal Justice Act," Ministry of Public Safety & Security and Salvation Army, Kingston Area Youth Serving Agencies, Kingston, Ont., January 8, 2003.
134. "The Youth Criminal Justice Act: Overview & Sentencing," Ministry of Community & Social Services, Kingston Probation Officers (half day seminar) Feb 7, 2003.
135. "The Youth Criminal Justice Act: An Introduction for Superior Court Judges," British Columbia Supreme Court Judges Education Program, Vancouver, March 7, 2003.
136. "Young Offenders and the School System," Ontario Principals' Council, Kingston, Ont., March 27, 2003.
137. "The Youth Criminal Justice Act: An Introduction to the New Law," Pathways Children's Services, Kingston, Ont. March 28, 2003.
138. "The Youth Criminal Justice Act: An Introduction for Judges of the Supreme Court of Newfoundland and Labrador," St. John's Nfld., April 9 & 10, 2003.
139. "Getting Hitched in Canada: Continuing Controversy Over Intimate Adult Relationships," Canadian Research Institute for Law & Family Annual Meeting, Lake Louise, Alberta, May 3, 2003
140. "A Century of Juvenile Justice Reform: 1908 - 2003" and "First Cases Under the Youth Criminal Justice Act," British Columbia Provincial Court Judges Education Program, Kelowna, British Columbia, May 1, 2003
141. "The Youth Criminal Justice Act and the Child Welfare System," main presenter at education programs for lawyers, child protection workers and other community professionals - May 16, 2003 Belleville
142. - May 30, 2003 Kingston
143. - June 5, 2003 Toronto (Office of the Children's Lawyer)
144. "The Competence and Credibility of Child Witnesses," half day workshop for judges (previous papers included in materials)
June 7, 2003 - Ontario Superior Court judges - Southwest region - Elora Ont.
145. Oct. 22, 2003 - Ontario Court of Justice judges - Central region - Muskoka, Ont.
146. "Child Credibility Assessment: Survey of Canadian Judges & Studies Comparing Justice System Professionals with Students," International Conference on Psychology & Law, Edinburgh, Scotland, July 11, 2003.
147. "Conferencing for Young Offenders: Legal & Policy Context," Judicial Development Institute for Ontario Court of Justice, Toronto, Jan.21-22, 2004.
148. "The Youth Criminal Act & The Role of the Youth Justice System in Responding to Youth Crime" (keynote address and workshop on YCJA) at Forum on Gangs, Guns and Race: Safe Schools & Safe Communities, Winnipeg, March 2, 2004.
149. "Same-sex Marriage in Canada & USA: Using Litigation to Change Public Policy & Public Attitudes," Socio-Legal Studies Conference, University of Glasgow, United Kingdom, April 6, 2004.

150. "Aboriginal Child Welfare in Canada" Canadian Research Institute for Law & Family Annual Meeting, Lake Louise, Alberta, May 1, 2004.
151. "Testifying On Behalf of Children: The Social Worker in Court" and "Assessing the Reforms to Child and Family Services Act," (panellist) Ontario Association of Children's Aid Societies Annual Conference, Toronto, June 1-2, 2004.
152. "Foster Parents: A Unique but Shadowy Legal Status," (keynote address) plus workshops on youth justice and testifying in court, Foster Parents Society of Ontario Annual Meeting, Kingston, June 11 & 12, 2004.
153. "The Youth Criminal Act & The Role of the Youth Justice System in Responding to Youth Crime" (keynote address and half day workshop) at Aboriginal Crime Prevention Symposium, Vancouver, June 15, 2004, Vancouver, British Columbia.
154. "Participation of Children in Ontario Family law Proceedings," Conference on Participation of Children in Family Proceedings, International Institute for Child Rights & Development, University of Victoria, at Vancouver, August 31, 2004.
155. "Community Based Responses to Youth Offending: The Y.C.J.A. & Legal Issues," Ontario Community Justice Association Annual Meeting, Roblin Lake Ont. Sept. 23, 2004.
156. "Children as Witnesses in the Canadian Criminal Justice System," Keeping the Promise Conference (Mary Manning Centre), Victoria, B.C., October 22, 2004
157. Bala, "Expert Evidence in Family Law Cases" & "Surreptitious Taping in Family Law Cases" Family Law Seminar of the National Judicial Institute, Vancouver, Feb. 10, 2005.
158. Bala, "The Legal Status of Foster Parents", "Testifying on Behalf of Children" & "Young Offenders & Children in Children's Aid Society Care," Foster Care Operators Association of Ontario, University of Toronto School of Social Work, April 19 & 20, 2005.
159. Bala, "Child Witnesses & Bill C-12," British Columbia Crown Prosecutors Education Program, May 6, 2005 (Presentation by DVD recording)
160. Bala & MacRae, "Polygamy: International Perspectives, Implications for Canada," Canadian Research Institute for Law & the Family, Annual Meeting, Lake Louise, Alberta, May 12, 2005.
162. Bala, Goldberg & Fidler, "Parental Relocation in Canada & the U.S.A.: Moving On," Association of Family and Conciliation Courts Conference, Seattle, Wash., May 20, 2005.
162. Bala, "Children as Witnesses in Canada's Criminal Justice System;" Bala, Hogben & Palmer, "Polygamy & Sharia in Canada: "The Intersection of Faith & Family Law;" Jaffe, Bala, Hyman & Mamo, " Spouse Abuse and the Family Courts." World Conference on the Prevention of Family Violence," Banff, Alta. Oct 24 & 25, 2005.
163. Bala, "How Is the YCJA Working? Implementation & Interpretation," Probation Officers Association of Ontario, Kingston, Nov. 8, 2005.
164. Bala, "Changes in Family Life & Controversies in Family Law: Cautious Politicians & Activist Professionals Slowly Reform Canada's Family Justice System," International Forum on Family Relationships in Transition: Legislative and Policy Responses, organized by the Australian Institute of Family Studies, Canberra, Australia, December 1-2, 2005.

165. Bala, "Children as Witnesses in Canada's Criminal Justice System;" Bala, " Spouse Abuse, Parental Separation & Children" Diverse Voices Conference (John Howard Society & YWCA sponsored) Edmonton, Alta., Dec. 6 2005.
166. Bala, "Child Welfare Reform: The Context", "Expert Witnesses and Assessments" (panelist), "Assessing Risk in Child Welfare Cases" (panelist), "The Standard of Proof in Child Welfare Cases" (commentator), Judicial Development Institute, Ontario Court of Justice Education Program, Toronto, Jan. 18-19, 2006,
167. Bala, "Adult Sentencing of Youth & The Convention on the Rights of the Child: A Canadian Perspective," Conference on The Role of International Human Rights in Administering Juvenile Justice in the United States, Georgetown University Law School, Washington, D.C., Jan. 24, 2006.
168. Bala, "Allegations of Sexual Abuse When Parents Have Separated: Children's Lying, Suggestibility & Vulnerability," American Psychology Law Society, St. Petersburg Florida, March 6, 2006.
169. Bala, "Assessing the Credibility of Child Witnesses, National Judicial Institute, Criminal Law Program," Montreal, March 30, 2006.
170. Bala, "Spouse Abuse, Parental Separation & Children: The Family Court Process," Lanark County Domestic Violence Conference, Perth, Ont. April 5, 2006.
171. Bala, "Allegations of Sexual Abuse When Parents Have Separated;" Bala & Harvey "Children and the Criminal Courts: Progress & Problems;" Child Witnesses in the Criminal Courts: Preparation and Practice," Canadian Society for the Investigation of Child Abuse, Calgary, May 3 & 4, 2006, Calgary Alberta
172. Bala & Williams, "Judicial Education on Child Welfare," Canadian Research Institute for Law & the Family, May 6, 2006, Lake Louise Alberta.
173. Bala, "Youth Justice Reform: Going in the Right Direction but Need for Further Action," Criminal Justice Conference of the National Union of Public Employees, Ottawa, May 12, 2006.
174. Bala, "The Context for Child Welfare Reform," Ontario Bar Association, Family Law Section, May 15, 2006, Toronto.
175. Bala, "Child Witnesses in the Criminal Courts: Legal and Psychological Issues," Education program of the Provincial Court Judges of Saskatchewan and Alberta, Edmonton, May 19, 2006.
176. Bala, "Polygamy in Canada: The Social and Legal Context," Canadian Association of Law Teachers Annual Meeting (participant in plenary session panel discussion), York University, May 29, 2006.
177. Bala & Mitnick, "Smokescreen or Fire: Allegations of Sexual Abuse in the Context of Parental Separation," Association of Family & Conciliation Courts: Annual Meeting, Tampa, Fla. June 1, 2006.
178. Bala, "Child Witnesses in the Criminal Courts: Legal and Psychological Issues," Education program of the Saskatchewan Court of Queen's Bench, Waskasieu, Sask. June 13, 2006.
179. Bala, "Reforming Canada's Child Witness Law" National Teleconference for Child Welfare League of Canada, June 21, 2006.
180. Bala, "Children's Voices in the Family Court Process" & "Expert Evidence in Family Law Cases," High Conflict Separation Program, National Judicial Institute, Kananaskis, Alta. July 8, 2006

181. Bala, "Participation of Children in the Family Court Process in Ontario and Alberta: Institutional and Professional Education Issues," Conference on Meaningful Child Participation in British Columbia Family Court Processes, organized by International Institute for Child Rights and Development and Law Foundation of B.C., Vancouver B.C., Aug. 28 - 30, 2006.
182. Bala, Introduction to Child Welfare, Evidentiary Issues in Child Welfare, Introduction to Child & Spousal Support, Ontario Court of Justice, Family Law Primer for Criminal Court Judges, Niagara-on-the-Lake, Ont., Sept. 18-22, 2006.
183. Bala, "Assessments in Child Welfare Proceedings in Ontario: Reforming Law & Practice," Ontario Court of Justice Annual Family Law Program, Muskoka, Sept. 27, 2006.
184. Bala, "Spouse Abuse and Child Welfare," Annual Conference of Ontario Association of Children's Aid Society Counsel, Ottawa, Sept. 28, 2006.
185. Bala, "Child Witnesses: Legislation, Case Law and Credibility Assessment," Maritime Superior Court Judges Education Seminar, Brundell River, P.E.I., Oct. 19, 2006.
186. Bala, "Expert Witnesses in Child Custody Disputes: Can They Make Recommendations" Plenary Session Debate, Child Custody Evaluators Education Conference, Association of Family & Conciliation Courts, Atlanta Georgia, Oct. 21, 2006
187. Bala, "Young Offenders Sentencing" & "New Child Witness Legislation: Caselaw and Problems," Ontario Court of Justice, West Region Education Program, Goderich, Ontario, November 2, 2006.
188. Bala, "Assessments Under the C.F.S.A. s. 54," Ontario Justice Summit, Toronto, November 15, 2006.
189. Bala, "Child Witnesses: Legal Reforms and Credibility Assessment", Alberta Court of Queen's Bench Education Program, Calgary, November 16, 2006.
190. Bala, "Family Law; Dilemmas in Evidence," panelist for Law Society of Upper Canada, teleconference program, Jan. 12, 2007.
191. Bala, "Role of the Judge in Child Welfare Proceedings" and "Spousal Violence Issues in Custody and Access Cases" (prior papers distributed), National Judicial Institute, Family Law Program, Victoria, B.C., Feb 7-9, 2007.
192. Bala, "Detention & Sentencing Under the Y.C.J.A.: National Trends," Youth Justice Symposium of Canadian Research Institute for Law & Family, Calgary, Alta, Feb. 23, 2007.
193. Bala, "Extra-Judicial Measures, Detention & Sentencing Under the Y.C.J.A.: A Review of National Trends," Northern Region, Probation Officers, Ontario Ministry of Children and Youth Services, Sault Ste. Marie, Ontario, March 1, 2007.
194. Bala & Harvey, "Child Witnesses: Preparation, Testifying and Credibility Assessment" Workshop of British Columbia Ministry of Children & Family Development, Abbotsford, B.C. April 24, 2007.
195. Bala, Fidler & Goldberg, "Practical Approaches to Parental Alienation Cases," Ontario Bar Association, Family Law Section, Toronto, April 30, 2007.
196. Bala, "Research on High Conflict Families," Canadian Research Institute for Law and the Family, Annual Meeting, Lake Louise, Alta., May 5, 2007.
197. Jaffe, Bala, Campbell, Hyman & Mamo, "Spouse Abuse and the Family Courts," 3rd International Conference on Children Exposed to Domestic Violence, London, Ontario, May 9, 2007.

198. Bala, "Children in the Criminal Courts: Assessing Credibility," Ontario Court of Justice Education Program, Niagara Falls, Ont., May 17, 2007.
199. Bala, "Responding to Youth Crime: Understanding the Role & Limits of the Youth Justice System," 6th Crime Prevention & Crime Reduction Regional Forum Kelowna, B.C. - May 24, 2007.
200. Bala, Fidler & Goldberg, "Responding to Alienation: Practical Solutions in the Family justice System" Association of Family & Conciliation Courts: Annual Conference, Washington D.C., May 31, 2007.
201. Bala, "Family Law & The Older Client: Grandparenting & Late Life Romance," National Elder Law Conference, Canadian Bar Association, Fredericton N.B., June 16, 2007.
202. Bala, "Child Witness Law in Canada: Psychological Research Results in Legal Reform" 30th International Congress on Law and Mental Health, University of Padua, Italy, June 30, 2007.
203. Bala, "Increasing Community Options for Young Offenders: The (Limited) Success of the YCJA," Annual Meeting of the Community Oriented Sentencing Program, Belleville, Ontario, Sept. 24, 2007.
204. Bala & Jaffe, "Spousal Abuse Issues in Child-related Family Law Cases," Joint meeting of Canadian Association of Provincial Court Judges and American Judges Association, Vancouver, Sept. 28, 2007.
205. Bala, "Allegations of Alienation & Sexual Abuse in High Conflict Separations" at Law Society of Upper Canada program on *Child Protection Hearings – Best Practices*, Toronto, Oct. 11, 2007.
206. Bala, "Liability & Accountability Issues for Child Welfare Workers," National Union of Public and General Employees, Ottawa, Nov. 9, 2007.
207. Bala, "High Conflict Separations and Children," Alberta Court of Queen's Bench Education Program, Edmonton Alta, Nov. 15, 2007.
208. Bala, "Allegations of Sexual Abuse When Parents Separate: "Smokescreen or Fire?" Zebra Child Protection Centre, Edmonton Alta, Nov. 16, 2007.
209. Bala & Lightstone, "Planning Curriculum for Judicial Education on High Conflict Divorce," National Judicial Institute Curriculum Planning Seminar, Ottawa, December 6, 2007.
210. Bala, "Making Plans for Custody & Access Cases with Allegations of Spousal Violence: The Need for Differentiated Responses," Office of the Children's Lawyer, Workshop for Clinical Investigators, Toronto, Jan. 19, 2008.
211. Bala, "Access Compliance: Understanding Problems, Developing Solutions," Federal-Provincial-Territorial Meeting on Access Compliance, Ottawa, Jan. 22, 2008.
212. Bala, Introduction to Child Welfare, Evidentiary Issues in Child Welfare, Introduction to Child & Spousal Support, Ontario Superior Court and Ontario Court of Justice, Family Law Primer Program, Cambridge, Ont., April 13- 18, 2008.
213. Bala, "Child & Vulnerable Adult Witness Reforms: Judicial Perceptions Survey & Case Law Review on Bill C-2," Department of Justice Canada, Montreal, April 22, 2008.
214. Bala, "Child Witness Reforms: Judicial Perceptions Survey & Case Law Review," Annual Meeting of Canadian Research Institute for Law and the Family, Lake Louise, Alta, May 3, 2008.
215. Bala, "Inadequate Forensic Pathology Reports: Child Welfare Issues" and "Separation, Access & Custody: The Implications of Spousal Violence," Canadian Society for the

- Investigation of Child Abuse, Calgary, Alberta, May 13, 2008.
216. Advanced Institute for Judicial Officers & Domestic Violence in Separating Families: Dilemma and Debates in Developing Parenting Plans, Association of Family and Conciliation Courts Annual Conference, Vancouver, May 28 – 30, 2008.
 217. Bala, “Alienation and Access for Very Young Children,” National Judicial Institute Program, on “Child Development and Best interests Decisions,” Deerhurst, Ontario, July 12 & 13, 2008.
 218. Bala, “Deterrence as A Principle of Youth Sentencing: No Effect on youth But a Significant Effect on Judges,” National Judicial Institute, program on Judging Effectively Under the *Youth Criminal Justice Act*, Toronto, February 26, 2009..
 219. Panellist on “Meaning and Interpretation of the Best Interests Principle” at Conference on Best Interest of the Child: Meaning and Application in Canada at Centre for Constitutional Rights, University of Toronto, Feb. 27, 2009.
 220. Bala, “The Y.C.J.A. After Six Years: Setting the Context”, Canadian Research Institute for Law & the Family Annual Meeting, Lake Louise, Alta., May 2, 2009.
 221. Family Law Panellist at the AFCC (Ontario) – Queen’s University, Celebrating Nick Bala Conference, May 8, 2009.
 222. Bala, “Domestic Violence in Family Proceedings: Recognizing the Nature & Effect of Violence,” Family Law Summit 2009, Law Society of Upper Canada, Toronto, June 12, 2009.
 223. Bala, “Adult Sanctions for Youth: Canada,” Consultation on Juvenile Justice, Inter-American Commission on Human Rights, Washington D.C., August 31, 2009.
 224. Bala, Responding to Alienation: Introduction to Concepts & Canadian Legal Responses, Ontario Court of Justice, Family Law Education Program, Sept. 23, 2009, Huntsville, Ontario.
 225. Bala, “Parental Alienation: Concepts & Legal Responses,” Open Bar program of Ontario Court of Justice, Toronto, Oct. 5, 2009.
 226. Bala & Bloomenfeld, “Young Persons in the Court of Queen’s Bench,” Manitoba Court of Queen’s Bench Education Seminar, Winnipeg, Oct. 29, 2009.
 227. Bala & Bloomenfeld, “Youth Criminal Justice Act: Principles, Precedents & Problems” Manitoba Provincial Court Education Seminar, Winnipeg, Oct. 30, 2009.
 228. Bala, “Parental Alienation: Concepts & Legal Responses,” Education Seminar of Quebec Superior Court, Montréal, Québec, Jan. 27, 2010.
 229. Bala “Alienation, High Conflict Separations, Child Welfare and the Family Justice System,” ParOntaio Webinar (child welfare workers, Feb. 23, 2010 (475 listeners).
 230. Bala, “Responding to Cultural Diversity in Regulating Adult Relationships: Polygamy & Sharia in Canada,” Agenda Setting Workshop on Family, Regulation and Society Universities of Exeter, Bath, Bristol & Cardiff, Nuffield Foundation, London, UK, March 15, 2010.(via webex)
 231. Bala, “Domestic Violence in Child-Related Cases: Differentiation and Parenting Plans,” & Allegations of Sexual Abuse in the Context of Parental Separation: Smokescreen or Fire?” Canadian Bar Association – Alberta, Calgary, April 29, 2010
 232. Bala, “Hearing the Voice of the Child in Custody & Access Disputes: Judicial Interviews with Children,” Annual Meeting of Canadian Research Institute for Law & the Family,” Lake Louise, Alta. May 1, 2010.
 233. Bala, ”Parental Alienation: Concepts & Caselaw”, Superior Court of Justice (Ontario)

- Annual Education Seminar, Niagara-on-the-Lake, May 5, 2010 (via webex)
234. Bala, "Alienation, High Conflict Separations, and the Family Justice System," Law Society of Newfoundland & Labrador, St. John's, NL., May 7, 2010 (via webex).
 235. Bala, Legal Issues for Victims of Abuse Seeking Redress, 3rd Annual Conference of Kingston Trauma & Abuse Centre, Kingston, Ont. May 20, 2010.
 236. Bala, "Responses to Alienation" (plenary) and "Judicial Interviewing of Children", Association of Family & Conciliation Courts Annual Conference, Denver Colo., June 3-5, 2010.
 237. Bala & Birnbaum, "Responses to Alienation" and "Judicial Interviewing of Children", Waterloo Bar Association, Kitchener, Ontario, June 9, 2010.
 238. Bala, Conference Co-Chair & moderator of sessions on Bill 133 Custody reforms & Child Protection issues, Family Law Summit, Law Society of Upper Canada, Toronto, June 10-11.
 239. Bala, "The Challenge of High Conflict Separations, Contact Disputes & Alienation of Children: A North American Perspective on UK Cases," Family Law Seminar (Families Need Fathers), House of Commons, Westminster, London, UK, June 16, 2010

Invited Lectures and Presentations at Universities

Outside of Queen's University

1. McGill University, Faculty of Social Work (Kingston program), Social Workers in the Courts, June 17, 2001
2. Oxford University, "Youth Justice Reform in Canada: Reducing Use of Courts & Custody, Continuing Controversy," Centre of Criminology, April 24, 2006
Osgoode Hall Law School, Family Law LLM,
3. History of Family Law, Oct. 11, 2006
4. Legal Regulation of Polygamy, Nov. 2, 2006
5. Child Witnesses & Charter issues, Nov. 17 & Dec. 1, 2009
Osgoode Hall Law School, OPD Criminal Law, LLM.
6. Child witness issues, Jan. 12, 2007.
7. Child Witness issues & Bill C-2, Jan. 31, 2009
8. University of Calgary, Faculty of Law, November 1989
- Legal Responses to Child Sexual Abuse
- Child Protection Law in Canada
9. University of Calgary (Edmonton campus), Department of Social Work,
December 7, 1989 - Legal Issues Related to Child Sexual Abuse.

University of Saskatchewan:

10. - Native Law Centre, "Aboriginal Child Welfare", Saskatoon, June 22, 1994
11. - College of Law, Faculty Lecture Series, "Reforming the Child Related Provisions of the Divorce Act," March 8, 1999
12. Université de Sherbrooke (Law & Theology), on polygamy, Feb. 21, 2007
13. University of Toronto, Faculty of Law, Children's law class on alienation, Feb. 23, 2010.
14. University of Windsor, Faculty of Law, Faculty Seminar on "The Constitutional Challenge to s. 43 of the Criminal Code," February 2, 2000

Queen's University Lectures & Seminars (outside of assigned law school teaching)

1. Sociology - Law & the Family, 1981, 1982 & 1990
2. Faculty of Medicine - Capacity to consent, 1982 & 1983
3. St. Mary's of the Lake Hospital - Capacity to Consent, 1984 & 1985
4. School of Rehabilitation Therapy, Legal Status of Children, 1984, 1985, 1986, 1987, 1988
5. Family Medicine Centre, Child Abuse, 1985 & 1986
6. Family Court Clinic, Child Custody Cases, 1990
7. Physical Health & Education, Child Abuse, 1991
8. Department of Obstetrics - Abortion & the Law, 1991
9. Group for Interdisciplinary Legal Studies, 1991
10. Faculty of Medicine - Two Career Families, 1994
11. Faculty of Health Sciences, Spousal Abuse & Legal Issues: 1998, 1999, 2000, 2001, 2002, 2003, 2004 [2], 2005, 2006, 2007, 2009
12. Paediatric Grand Rounds, Children & Divorce, 2000
13. Faculty of Law, Faculty Seminars, 1988, 2000 & 2002
14. Faculty of Law, Family law lectures to Visiting Chinese scholars, 1999 & 2000
15. School of English – Same-sex Marriage & Polygamy, 2005 & 2006
16. Excellence in Research Public Lecture, 2006
17. School of Policy Studies, child welfare law, 2007
18. Psychology Department, Graduate Seminar in Clinical Program, 2009
19. Mini-U Lectures on Child Witnesses and Evolution of the Family in Canada, 2009
20. Mini-U Lectures on Child Witnesses and Young Offenders, May 29, 2010

Briefs Presented at Parliamentary Committee Hearings

- 1 Presented brief of Canadian Council on Children & Youth on Bill C-15, "Child & Adolescent Sexual Offences Act", to House of Commons Committee, December 1986
- 2 Presented brief of Canadian Council on Children & Youth on Bill C-15, "Child & Adolescent Sexual Offences Act", to Senate Justice Committee, December 1986
- 3 Presented brief on Bill C-58, Young Offenders Amendments, on behalf of Canadian Council on Child & Youth, and Witness at House of Commons Committee, October 1990
- 4 Presented brief on Young Offenders Amendments, on behalf of Canadian Council on Child & Youth, at Senate Committee on Bill C-12, March, 1992
- 5 Presented brief on Bill C-12, Young Offenders Amendments, of Canadian Council on Children & Youth at Senate Committee, March 1992
6. Presented brief to House of Commons Justice Committee studying reform of child sexual laws, April, 1993
- 7 Presented brief at House of Commons Committee on Bill C-126 (child sexual abuse and criminal harassment), June 1993.
- 8 Presented brief on Bill C-37 (Young Offenders Act amendments), to House of Commons Committee on Justice and Legal Affairs, September 27, 1994, Ottawa
9. Presented brief on Bill C-37 (Young Offenders Act amendments), to Senate Committee, Ottawa, March 1995

10. Presented brief on Phase II of Young Offenders Reform, to House of Commons Committee on Justice and Legal Affairs, May 9, 1996
11. Presented brief presented to Senate Committee on Child Support Guidelines, January 28, 1997.
12. Presented brief at hearing of Special Joint Parliamentary Committee on Reform of Child Related Provisions of the *Divorce Act*, March 1998
13. Presented brief at hearing of Senate Committee on Social Affairs on *Child Support Guidelines*, April 1, 1998
14. Presented brief on *Youth Criminal Justice Act (Bill C-3)* to House of Commons Justice and Legal Affairs Committee, Feb. 16, 2000, Ottawa
15. Presented brief on Bill C-23 (Same Sex Relationships) to House of Commons Justice and Human Rights Committee, March 16, 2000, Ottawa
16. Presented brief to House of Commons Committee on Justice and Human Rights on Bill C-20(child witness reform), October 8, 2003.
17. Presented brief to Senate Committee on Human Rights on "The Protection of Children in Canada's Justice System & the United Nations Convention on the Rights of the Child," Ottawa, Dec. 13, 2004.
18. Presented brief to House of Commons Committee on Justice and Human Rights on Bill C-2(child witness reform), March 24, 2005.
19. Presented brief House of Commons Committee on Justice and Human Rights, on Bill C-4 (youth justice reform), June 8, 2010

Briefs Submitted to Government Committees and Commissions, etc.

1. Submitted brief on "Advocacy for Children", to Ontario Ministry of Community & Social Services, January 1981
2. Submitted brief on Ontario "Child & Family Services Act", to Legislative Committee, February 1984
3. Principal drafter of brief of Canadian Council on Children & Youth Canada, "Divorce Act, 1985", November 1985
4. Submitted brief to Garber Committee on Adoption Disclosure, March 1986
5. Presented brief of Canadian Council on Children & Youth on Bill C-106, "Young Offenders Amendment Act", at House of Commons Committee, June 1986
6. Presented brief to Thomson Committee on Social Assistance Review, December 1986
7. Submitted brief to Zuber Committee of the attorney General of Ontario in regard to proposals for Unified Family Courts, December 1987
8. Submitted brief on Unified Family Court in Kingston, to Ministry of the Attorney General of Ontario, December 1992
9. Submitted brief on Legal Recognition of Unmarried Cohabitation and Homosexual Relationships, to Ontario Attorney General, January 1994
10. Submitted brief to Task Force on Child Protection Law Reform in Ontario, December 1997
11. Submitted brief to Law Society of Upper Canada Task Force on revision of Code of Professional Conduct (Family & Children's Law), September 1999

12. Submitted brief to Department of Justice Consultation Paper on *Child Victims*, February 2000
13. Presented brief on *Youth Criminal Justice Act (Bill C-7)* to Senate Committee on Constitutional and Legal Affairs Committee, Oct. 24, 2001 Ottawa
14. Submitted brief to Minister of Justice responding to: *Marriage and Legal Recognition of Same Sex Unions: A Discussion Paper* (November 2002)
15. Submitted brief to House of Commons Committee on Justice and Human Rights on Bill C-22(reform of child -related provisions of the *Divorce Act*) (Summer 2003)

Invited Participant to Government Law Reform Consultation Sessions

1. Ministry of Health & Welfare Canada, on child sexual abuse, September 1988, Millcroft Inn, Ontario
2. Ministry of Health & Welfare Canada, Legal Issues related to Child Sexual Abuse Consultation, November 1988, Vancouver
3. Ministry of Health & Welfare Canada, Special Advisor on Child Sexual Abuse, National Consultation, chair session on Legal Issues, May 1989, Ottawa
4. Department of Justice Canada, Young Offenders Amendments, Ottawa, October 1989
5. Ontario Law Reform Commission, Child Victim Witness Project, Toronto, January 1991
6. Ontario Task Force on Alternative Measures for Young Offenders, Toronto, February 1991
7. Ministry of Justice Canada, Young Offenders Amendments, Ottawa, November 1991
8. Ontario Law Reform Commission, Round Table on Reporting Child Abuse, October 1992
9. Ontario Ministry of Community & Social Services, Member of Task Force on Screening Child Abusers, 1992-94
10. Department of Justice Canada, on reform of child custody laws, Ottawa, October, 1992
11. Canadian Children's Bureau, on reform of corporal punishment law, Ottawa, January 20, 1994
12. Department of Justice Canada, on child abuse screening, Toronto, May 12, 1994
13. Department of Justice Canada, on violent young offenders, Toronto, May 24, 1994
14. Department of Justice Canada, on research on custody and access issues, Ottawa, June 3-4, 1994
15. Participant in National Forum on Youth Crime and Justice, House of Commons Justice Committee, Ottawa, November 22, 1996
16. Participant at Department of Justice Round Table on Offenders Under 12, Ottawa, February 16, 1999
17. Participant at Ontario Office of Victims of Crime Consultation, Ottawa, March 26, 1999
18. Invited participant at Department of Justice Consultation on Offenders Under 12, Toronto, June 14, 2000
19. Invited participant at Department of Justice Round Consultation on Sexual Offences Against Children, Toronto, June 15, 2000
20. Invited participant at: Child Welfare Research & Policy Forum, for Centre for Excellence for Child Welfare, hosted by School of Social Work, University of Toronto at Kitchener, Ont. June 22, 2002.

21. Invited participant to Canadian Experts Meeting on Guidelines on Justice for Child Victims/Witnesses, Department of Justice, Ottawa, Dec. 13 & 14, 2004.
22. Ontario Legal Aid, Future of Access to Justice Roundtable, Toronto, June 11, 2007
23. Department of Justice Canada, Youth Justice Reform, Toronto, August 29-30, 2007
24. Department of Justice Canada, Youth Criminal Justice Act Review Roundtable, Toronto, July 16, 2008.
25. Ontario Law Commission, Roundtable on Family Law Reform, Toronto, Toronto, Sept. 13, 2008.
26. Inter-American Commission on Human Rights, Consultation on Report on Juvenile Justice in the Americas, Washington D.C., Oct.23, 2009 (inviter participant)
27. Department of Justice Canada, Youth Bail & Pre-Trial Detention, Research & Policy Meeting, Toronto, March 5, 2010.

Videotapes for Judicial & Professional Education

1. "A Juvenile Trial: R. v. David Mitchell" (1980) (with Prof. H. Lilles and Judge P. Nasmith)
2. "Termination of Parental Rights: Re Joy F" (1981) (Prepared on contract for Ontario Ministry of Community and Social Services) (with Prof. H. Lilles and Judge P. Nasmith)
3. "R. v. Robert Langtin: A Trial under the Young Offenders Act" (1982) (prepared on contract for Ministry of the Solicitor General of Canada). These video tapes, produced together with Prof. Lilles and Judge A.P. Nasmith, were used extensively across Canada for teaching law students, judges, lawyers and other professionals.
4. "Children's Evidence" (1987), prepared for Federation of Law Societies of Canada, participated in writing, acting and directing with Prof. R. Delisle. This videotape has been used extensively across Canada for teaching judges, lawyers and law students.
5. Youth Criminal Justice Act, video for judges and other professionals, funded by National Judicial Institute and Department of Justice (2002)
6. High Conflict Family Law Cases, video for use in teaching of judges, funded by National Judicial Institute and Department of Justice (2004) .
7. Support Enforcement Proceedings, video for use in education programs of the Ontario Court of Justice and Ontario Superior Court (2006)

Community Presentations

1. Speaker on "Canadian Legal System", Czechoslovak Society of Arts & Science, Ottawa, March 1978
2. Speaker on "Children's Rights", Moira Secondary School, Belleville, April 1979
3. Speaker on "Children's Rights", Ontario Council of Girl Guides, Kingston, May 1979
4. Speaker on "Legal Responsibilities of Staff", Camp Outlook, Kingston, June 1981 and June 1982
5. Speaker on "Legal Responsibilities", Block Parents Annual Conference, Kingston, May 1981
6. Speaker on "Gays & Family Law", Queen's Homophile Association, Kingston, September 1982

7. Speaker on Young Offenders Act and Alternative Measures, Kingston, July 1983, Frontenac Diversion Program
8. Speaker on Young Offenders Act to Kingston Police Force, Autumn 1983 (three lectures) May 1985
9. Speaker on Young Offenders Act to Frontenac County Principals Association, Ivy Lea, May 1984
10. Speaker on Young Offenders Act at Provincial Principal's Course, Ottawa, July 1984
11. Speaker on Young Offenders Act, Lasalle Secondary School, April 1985
12. Speaker on "The Legal Status of Children", Provincial Association of Women Annual Meeting, April 1985, Kingston
13. Speaker on Young Offenders & Child Abuse, Queen Elizabeth Collegiate & Vocational Institute, Kingston, April 1986
14. Speaker on Law and the Legal System, Bayridge Public School, Kingston, April 1987
15. Kingston Children's Aid Society, presentation to Board on Child Abuse Register Review, March 1988
16. Renfrew Children's Aid Society, guest speaker at Annual Meeting on "Legal Responses to Child Sexual Abuse", Pembroke, April 1988
17. Frontenac Diversion Project, speaker at Training session for Youth Court Committee, Kingston, November, 1988 & September 1992.
18. Queen's Alumni Dinner, speaker on "Legal Responses to Child Abuse", Smith Falls, May 1989
19. Queen's Course for Public School Principals, on Young Offenders issues, Kingston, July 1989
20. Professional Development Day, Loyalist Collegiate and Vocational Institute, Kingston, Young Offenders and Sexual Abuse, September 1989
21. Y's Men Club International, Legal Issues in regard to child sexual abuse, Kingston, December 1989
22. Frontenac Secondary School, Young Offenders, Kingston, December 1989, November 1990, December 1991, December 1992, December 1993, December 1994, December 1995, May 1997
23. Kingston Telephone Aid Distress Centre, Training Session, Legal & Ethical Issues, Kingston, June 1989
24. Gananoque Rotary Club, Family Law, December 1990
25. Belleville Community Options Sentencing Project, Annual General Meeting, Young Offenders and Alternative Measures, May 1991
26. Prince Edward Children's Aid Society, Annual General Meeting, Legal Response to Child Sexual Abuse, April, 1992, Picton.
27. Canadian Association of Journalists, speaker on Young Offenders, Belleville, October, 1992
28. Kingston Rotary Club, on Legal Responses to Violent Young Offenders, February 1994
29. Kingston Collegiate & Vocational Institute, on Discrimination Against Teenagers, May 1995
30. Men's Conference, on Child Custody, Kingston, Oct. 21, 1995
31. John Howard Society of Kingston Annual Meeting, "The Young Offenders Act: Controversies & Concerns" Sept. 17, 1997
32. Queen's University Student Liberals, on divorce law reform, Feb. 9, 1999

33. Youth Crime In Our Community, panel discussion at Kingston City Hall, September 16, 1999
34. Pittsburgh Correctional Institution, Family Law for Pre-release Program, Feb. 10, 2000
35. Queen's University Alumni, Kingston Branch, "Myths and Realities in Youth Justice" Kingston, March 29, 2000
36. Queen's University Institute for Lifelong Learning, "Responding Effectively to Youth Crime," Kingston, November 26, 2000
37. Child Witnesses & The Criminal Justice System: The Need for Law Reform, Kingston Children's Aid Society, Annual General Meeting, June 12, 2001.
38. Canadian Federation of University Women, Kingston Club, Open Forum on the *Youth Criminal Justice Act*, on "The New Act" and "Community Diversion Programs," Nov. 2, 2002.
39. Hastings County Children's Aid Society Annual Meeting, Keynote speaker on "The Youth Criminal Justice Act: New Challenges for the Child Welfare System," Belleville Ont. June 18, 2003
40. Collins Bay Correctional Institution - family law lecture for inmates, Feb. 19, 2004.
41. Faculty of Health Sciences, Queen's University, enrichment program for high school students - on legal issues related to domestic violence, May 19, 2004.
42. Canadian Association of Retired Persons, on legal rights of grandparents, Toronto, June 10, 2005
43. Lifelong Learning Program, Kingston, on child witnesses, Sept. 30, 2005
44. Kingston Collegiate & Vocational Institute, Careers in the Justice System, May 11, 2009.
45. The Development of Family Law in Ontario, Canadian University Women's Club Kingston, May 13, 2009.
46. National Perspectives on the YCJA: Reducing Use of Courts & Custody for Teens in Canada, Crime & Our Kid Forum, City Hall, Kingston, Ont. April 15, 2010.

Academic & Professional Organizations and Memberships

- Canadian Research Institute for Law & the Family at the University of Calgary, Board member, 1996-present (Executive Committee, 1998-present)
- Centre for Excellence for Child Welfare, School of Social Work, University of Toronto; Advisory Committee, 2001-2007.
- International Society of Family Law, contributor to International Survey of Family Law 1986-present; conference organizing Committees 1993, 1996, 1999, 2001 (Convenor)
- Law Society of Upper Canada (1982 call to the Bar, non-practising member).
- Canadian Association of Law Teachers; member 1980- present (Convenor, Family Law Section, 1983-1986)
- Association of Family and Conciliation Courts, member, 2004-present
- Ontario Bar Association, 2008 to present, member (Family Law Section)
- Canadian Bar Association, Ad Hoc Committee on Young Offenders, 1985-86
- Child, Youth and Family Policy Research Centre (Ontario) Research Board, 1987 to 1989
- Canadian Council on Children and Youth, Board of Directors, 1984 to 1990; Advisory Board, 1990 to 1992

Boards (Child & Family Serving Organizations)

- Frontenac Youth Diversion Committee, volunteer 1984 to present; member of Executive 1985-1990; President 1987-1990
- International Bureau for Children's Rights (based in Montreal). Board of Directors (2005-2009)
- Justice for Children, member 1983- present (Policy Committee 1987 - 1993)
- Frontenac Family Mediation Service, Kingston, Board member 1980-81
- St. Lawrence Youth Assoc. (Juvenile Court Home), Kingston, Board member 1981-83
- Children's Aid Society of Kingston, Board member, 1982 to 1986