

**“WHO/IF/WHEN TO MARRY, IT’S A CHOICE”:
A HISTORY OF FORCED MARRIAGE IN CANADA, 1948-2008**

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2. Michele Johnson
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Abstract

This study of the regulation of marriage without consent provides irrefutable evidence of the longstanding history and persistence of forced marriages in Canada. Between 1948 and 2008, profound changes took place in the rhetoric about forced marriage, its regulation by the Canadian state, the ways in which it was contested, and the realities for persons in forced marriage situations. Drawing on archival research, case law and interviews, I argue that the freedom to choose who/if/when to marry in this period nevertheless remained fundamentally constrained. By accepting and assuming full and free consent to marriage was possible, as outlined in laws and human rights instruments in this period, Canadians ignored, overlooked and denied the structural dynamics, challenges, constraints and patriarchy that made full and free consent for all impossible.

Beginning in a period where there is clear international and national prohibition of marriage without consent, this dissertation is periodized based on key legal reforms, changes, moments and themes involving Canadians and global actors who exchanged ideas, participated in events, actions and conversations on the issue of forced marriage. I provide conceptual clarity on what constitutes legal consent in marriage and when forced marriage meets the threshold of slavery. I analyse the many forms and contexts in which forced marriages took place, how and why they were perpetrated, accepted, negotiated and resisted. Importantly, feminist work to combat forced marriages in the period revealed fundamental flaws, structural inequalities, power dynamics and violence not only at the heart of forced marriages, but central to the institution of marriage as a whole. Further, contrary to racialized and anti-immigrant stereotyping, forced marriage in Canada cannot be reduced to an international, Aboriginal, immigrant or Muslim “problem”. As I demonstrate through a diverse range of complex cases, the history of forced marriage in Canada as a source, transit and destination country between 1948 and 2008 was far more complex.

Dedication

To my loved ones, the survivors who courageously shared their testimonies, activists and service providers near and far who work tirelessly to end forced marriages in our local and global communities.

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Throughout my childhood, adolescence and early adult years, my paternal grandparents shared their testimonies of enslavement during the Second World War. We discussed and I witnessed the consequences of slavery experienced by them as individuals, by our family, and by entire communities near and far. Once in freedom, Morris and Hadassah Sapoznik made what they saw as their most significant life decision: to marry one another on the basis of mutual love, free choice, commitment and respect. They were married in 1947 – one year before the start date of this study. Hadassah and Morris Sapoznik, thank you for your example of over 68 years of marriage.

The themes of freedom, social justice and equality in marriage, as raised by the words of Lucretia Mott in the quote above written 166 years ago, are what led me to this topic. However, when I first began my PhD, I fully intended to write about anti-slavery movements in the late eighteenth and early nineteenth centuries. Little did I know how an encounter with one young woman I met at the Canadian Centre for Victims of Torture in 2008 would change my life. By sharing her experience, Amina launched my journey into, in her words, “a form of slavery people don’t talk about”: forced marriage. Very soon, I became aware of longstanding initiatives to advocate against forced marriages in and through Canada, using many of the tools pioneered by anti-slavery activists: petitions, boycotts, political posters, mass media, and national campaigns with local committees. As I write this today, awareness has grown, and forced marriages and efforts to combat them are regularly in the news in our local and global communities.

I am very grateful to the dozens of men and women who met with me throughout this project. A particular note of thanks to Amina and the thirty-five survivors, front-line service providers, lawyers, community members, researchers and activists who agreed to share their experiences through formal interviews. Your insights guided and inspired me, and your words and voices come to the fore throughout this thesis, from its title to its final conclusion.

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List of Abbreviations

CIC	Citizenship and Immigration Canada
CBSA	Canada Border Services Agency
CCVT	Canadian Centre for Victims of Torture
FLDS	Fundamentalist Church of Jesus Christ of Latter-Day Saints
FRGWM	Forum on the Rights of Girls and Women in Marriage
ICRW	International Center for Research on Women
IRB	Immigration and Refugee Board
IRS	Indian Residential School
LAC	Library and Archives Canada
LON	League of Nations
NAAF	Network of Agencies Against Forced Marriage
RCMP	Royal Canadian Mounted Police
SALCO	South Asian Legal Clinic of Ontario
SAWC	South Asian Women's Centre
TIP	Trafficking in Persons
UDHR	Universal Declaration of Human Rights
UN	United Nations

Opening Quote

In the true married relationship,
the independence of husband and wife will be equal,
their dependence mutual,
and their obligations reciprocal.

from *Discourse On Woman* by Lucretia Mott,
delivered December 17, 1849.

Introduction: “What’s Love Got To Do With It?”

Every girl dreams of a Cinderella marriage.
I used to dream, I thought I’ll have my knight in
shining armour come and sweep me off my feet,
and take me to this land of love....a very, very
happy married life with lots of kids, a beautiful
home and a white picket fence.¹ -Nazli

Like Nazli, people of all ages and backgrounds dream of “Cinderella marriages.”

As F.A.R. Chapman notes, referring to Shakespeare’s famous words in *A Midsummer Night’s Dream*, “The unspoken wish of our society that *every Jack will have his Jill ... and not shall go ill* is prettily spoken, but less neatly embodied.”² Indeed, contrary to Shakespeare’s famous quote, much can “go ill” within courtships and marriages. This dissertation focuses on one of these ills – forced marriage – defined in this study as “any marriage which occurs without the full and free consent of one or both individuals”.³

This study of the regulation of marriage without consent provides irrefutable evidence of the longstanding history and persistence of forced marriages in Canada. Beginning in a period where there is clear international and national prohibition of

¹ Nazli, *Interview by Author. Digital Recording*. (Tim Hortons, North York, Toronto, August 20, 2012).

² F.A.R. Chapman, *Law and Marriage: Vital Information for Every Canadian* (McGraw-Hill: Toronto, 1968), back cover; William Shakespeare, *A Midsummer Night’s Dream*, circa 1590.

³ As the National Network of Agencies Against Forced Marriage (NAAF) and the South Asian Legal Clinic of Ontario (SALCO) explain, “a forced marriage is a form of violence and an abuse of human rights. It is a practice in which a marriage takes place without the free consent of the individuals getting married. Forced marriage can happen to anyone; of any gender, of any age”. A child under the age of 18 is legally incapable of giving their valid consent to enter into marriage. However, parental consent on behalf of a teenager between the ages of 16 or 18 is valid. Under the 1962 *Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages*, all child marriages are considered to be forced marriages. See *Forced/Non-Consensual Marriages: A Tool Kit for Service Providers*, June 2010, p. 13 and *Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages*, November 7, 1962, 32 U.N.T.S. 231.

marriage without consent⁴, it challenges assumptions about the institution of marriage in Canada, highlighting the fundamental discord between rhetoric and reality on forced marriage, the many forms and contexts in which forced marriages have taken place, how and why they are perpetrated.

My working definition of forced marriage above highlights that forced marriages can happen to anyone, of any age, of any gender. As we will see later, the duress in forced marriage cases can be physical, emotional/psychological, or a combination of the two. I have elected to use the term “forced marriage” throughout this dissertation because it is the term that the experts and survivors⁵ interviewed for this study used most frequently, and felt best captured the essence of their experiences. However, I recognize that “forced marriage” has become a problematic umbrella term, and delve into this issue later. The terms “non-consensual marriage” and “marriage without consent” are also used within this thesis, as they too capture the range of scenarios and cases of forced marriage connected to what may be labelled as “servile marriage,” “mail-order brides,” “child marriage,” “involuntary marriage,” “marriage trafficking,” “sexual slavery,” and/or “enslavement.”

At 17, Nazli was vulnerable to being forced to marry when she ran away from her home in the General Toronto Area. She sought refuge with a woman in her neighbourhood after fleeing her family because of their attempts to force her to marry a man against her will. Ironically, this woman she trusted and approached for help would

⁴ On prohibition of marriage without consent at the provincial level, see, for example, *The Marriage Act*, C.C.S.M. c.M50 for the province of Manitoba and *Marriage Act*, R.S.O. 1990, c. M.3 for the province of Ontario. As we will see later, through the 1948 *Universal Declaration of Human Rights*, Canada acknowledged consent as a requisite requirement for a valid marriage.

⁵ I use this term for individuals who self-identify in the thesis as survivors of forced marriage.

coerce her to do just that: “I was only 18, and the right thing for her to have done at that time was to say ... ‘I’m going to call your parents and tell them to come and get you, and make sure your father doesn’t hit you.’ But she said to me, ‘No, no, no, you come. I’m only going to take you to my house if you marry my son.’”⁶ Too fearful to go home and face a severe beating, Nazli’s forced marriage experience had begun. Shortly thereafter, she was convinced to quit her studies, even though she had received a university scholarship. Almost thirty years later, Nazli explains “At 17, 18, what do you know? ... I do know my rights now, but I didn’t know them before.”⁷ Fortunately, years later, with help from Toronto police and loved ones, Nazli was able to flee and end the abusive marriage she had never agreed to. She deeply regrets that, in her absence, her younger sister was forced to marry the son of their mother’s best friend. Shortly after Nazli ran away, her 17 year old sister was drugged and driven from the Greater Toronto Area to Chicago, where a marriage ceremony was performed without her sister’s consent. As Nazli recounts, “the next thing my sister knew, she was married to this prick who was also an abuser.”⁸

The mid twentieth and early twenty-first centuries have been marked by regional, national and international initiatives to end forced marriages like those experienced by Nazli and her sister. Yet, globally speaking, millions of women, men, girls and boys continue to be married without their free and full consent.⁹ While existing data and

⁶ Nazli, *Interview by Author*, August 20, 2012.

⁷ Ibid.

⁸ Ibid.

⁹ Most recently, there has been international outcry and attention to the issue of forced marriage in connection with the abduction of 300 Nigerian schoolgirls by the Islamist extremist group Boko Haram in April 2014. See, for example, Amnesty International “Our job is to shoot, slaughter and kill’: Boko

statistics need to be critically analyzed and problematized more robustly, recent studies country and regional surveys have reported thousands of cases¹⁰, and estimate, globally speaking, that every three seconds a girl under the internationally accepted age of legal consent is forced to marry against her will.¹¹ In June 2008, spotlight was cast on the prevalence of forced marriages in Canada. Following several high profile cases, a first international symposium held in Toronto on the topic¹² and the launch of the South Asian Legal Clinic of Ontario's "Forced Marriage Project,"¹³ Canadian newspapers reported that every year, dozens of young girls, women, and occasionally boys and men are forced into marriages in Canada or abroad.¹⁴ In 2014, Bill S-7, *An Act to amend the Immigration*

Haram's Reign of Terror in North-East Nigeria," (London, 2015), 91 p. and Geoffrey York and Kim Mackrael "Canada to aid Nigeria in search for abducted schoolgirls," *The Globe and Mail*, May 7, 2014.

¹⁰ See Catherine Turner, "Out of the Shadows: Child Marriage and Slavery." London: Anti-Slavery International, 2013, 50p., available at: http://www.antislavery.org/includes/documents/cm_docs/2013/c/child_marriage_final.pdf; Heather Heiman and Jeanne Smoot, *Forced Marriage in Immigrant Communities in the United States: 2011 National Survey Results*, Research Report, Tahirih Justice Center: Protecting Immigrant Women and Girls Fleeing Violence, 2011, 11p. (May 28 2013), available at www.tahirih.org/site/wp-content/uploads/2011/09/REPORT-Tahirih-Survey-on-Forced-Marriage-in-Immigrant-Communities-in-the-United-States-September-2011.pdf; Anne Kazimirski, Peter Keogh, Vijay Kumari, Ruth Smith, Sally Gowland, Susan Purdon with Nazia Khanum, *Forced Marriage – Prevalence and Services Response*, Research Report No. DSCF-RR 128, National Centre for Social Research, 2009, 65p. (May 28 2013), available at

www.gov.uk/government/uploads/system/uploads/attachment_data/file/189646/DSCF-RR128.pdf.pdf; International Center for Research on Women, "How to End Child Marriage: Action Strategies for Prevention and Protection," 2007, 6p., available at: <http://www.icrw.org/files/publications/How-to-End-Child-Marriage-Action-Strategies-for-Prevention-and-Protection-Brief.pdf>

¹¹ Tahirih Justice Center, online brochure, p. 4. <http://www.tahirih.org/site/wp-content/uploads/2013/11/Akin-Gump-Tahirih-Brochure.pdf>

¹² See "Selected Proceedings from The Right to Choose International Symposium on non-consensual marriage," Toronto, June 2008, available at: www.awid.org/Library/Selected-proceedings-from-The-Right-to-Choose-international-symposium-on-non-consensual-marriage-Toronto-Canada-June-2008 and Ontario Women's Justice Network, "When, Who and If to Marry.... You Have the Right to Choose," (Summer 2008), available at: www.owjn.org/owjn_2009/index.php?option=com_content&view=article&id=276%3Awhen-who-and-if-to-marryyou-have-the-right-to-choose&catid=55&Itemid=102.

¹³ See www.forcedmarriages.ca/

¹⁴ Chapter I will nuance and provide analysis on existing data and statistics, including an overview of SALCO's research study (I had the pleasure to be involved with) that sparked significant debate and conversation on forced marriage in Canada. See Maryum Anis, Shalini Konanur and Deepa Mattoo, Eds., "The Incidence of Forced Marriage in Ontario," (South Asian Legal Clinic of Ontario, 2013): 56p.,

and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts, was announced by Canada's Citizenship and Immigration Minister.¹⁵ Controversially named the *Zero Tolerance for Barbaric Cultural Practices Act*, it highlights the relevance and timeliness of this project.

When we consider forced marriage over *la longue durée*¹⁶, the forced marriages we are increasingly aware of in Canada are *not* new. Indeed, for most of history forced marriages have been ubiquitous, and not deemed problematic. What is new is the growing misguided, triumphalist discourse that complete full and free consent – and by

available at: <http://www.salc.on.ca/SALCO%20-%20Who,%20If,%20When%20to%20Marry%20%20-The%20Incidence%20of%20Forced%20Marriage%20in%20Ontario%20%28Sep%202013%29.pdf>.

For newspaper articles as mentioned above, see *Toronto Star*, “Bride says sex was way to flee forced marriage,” Patti Fong, Tuesday September 18 2007, available at: www.thestar.com/article/257686; *Toronto Star*, “Lost brides: When arranged marriages go quickly awry,” Raveena Aulakh, Sunday November 15 2009, www.thestar.com/news/world/2009/11/15/lost_brides_when_arranged_marriages_go_quickly_awry.html; *Toronto Star*, “Forced to wed: ‘They think they’re doing what’s best for the child,’” Raveena Aulakh, Saturday November 14 2009, available at: www.thestar.com/news/canada/2009/11/14/forced_to_wed_they_think_theyre_doing_whats_best_for_the_child.html; and *Toronto Star*, November 15, 2009 “Compelled to wed once, then again,” Raveena Aulakh, Saturday November 14 2009, available at: www.thestar.com/news/canada/2009/11/14/compelled_to_wed_once_then_again.html.

¹⁵ Bill S-7 can be read in its entirety at

http://www.parl.gc.ca/content/hoc/Bills/412/Government/S-7/S-7_3/S-7_3.PDF

¹⁶ Here I am building on the work of Fernand Braudel and the Annales School's approach to history that emphasizes the need to prioritize longstanding historical structures. In Braudel's words,

All historical work is concerned with breaking down time past, choosing among its chronological realities according to more or less conscious preferences and exclusions. Traditional history, with its concern for the short time span, for the individual and the event, has long accustomed us to the headlong, dramatic, breathless rush of its narrative....today, side by side with traditional narrative history, there is an account of conjectures which lays open large sections of the past, ten, twenty, fifty years at a stretch ready for examination. Far beyond this...we find a history capable of traversing even greater distances, a history to be measured in centuries this time: the history of the long, even of the very long time span, of the *longue durée*....in order to distinguish the opposite of...“*l’histoire événementielle*,” the history of events.

See “History and the Social Sciences: The *Longue Durée*,” in Fernand Braudel and Sarah Matthews, *On History* (The University of Chicago Press, 1982), p. 27.

This thesis does not privilege the *longue durée* over the history of events. However, I agree with Braudel that shorter time spans, especially the sixty year period of this study, must be placed within the context of broader historical marriage structures. It is for this reason that I move outside of my 1948-2008 period from time to time, providing context and structure to key events and cases, particularly in the colonial and pre-1948 periods.

proxy “marriage for love” – are possible when, as this project argues and reveals, consent to marriage is by nature constrained and the institution of marriage itself flawed, for it lends itself to forced marriage irrespective of progressive laws, rhetoric, theoretical rights and the passing of time. Coontz’s exhaustive world history of marriage stresses that

for most of history, marriage was not primarily about the individual needs and desires of a man and woman and the children they produced. Marriage had as much to do with getting good in-laws and increasing one’s family labor force as it did with finding a lifetime companion ... marriage spoke to the needs of the larger group. ... It was too vital an economic and political institution to be entered into solely on the basis of something as irrational as love. For thousands of years the theme song for most weddings could have been “What’s Love Got to Do with It?”¹⁷

With some notable historical “love story” exceptions, she notes that “because marriage was [deemed] too important a contract to be left up to the two individuals involved, kin, neighbors, and other outsiders, such as judges, priests, or government officials, were usually involved”.¹⁸ In early modern Europe, for example, it was thought that if spouses were of “good character,” love would develop between them after they wed. Coontz’s findings suggest that most individuals in this period “accepted or even welcomed” involvement by their kin and peers in their marriages.¹⁹ However, beginning especially in the eighteenth century, this trend, according to Coontz and other historians of marriage²⁰, allegedly changed, leading to a ‘revolutionary’ and ‘unparalleled’ triumph of ‘free choice’ and ‘marriage for love’. This project sheds light as to why this simplistic

¹⁷ Stephanie Coontz, *Marriage, A History: From Obedience To Intimacy, or How Love Conquered Marriage* (New York: Viking, 2005), 6-7. The quote “What’s Love Got to Do With It” is the title of Tina Turner’s famous song, which topped the charts in 1984.

¹⁸ *Ibid*, 7.

¹⁹ *Ibid*, 18-19.

²⁰ See, for example, Elizabeth Abbott, *A history of marriage: from same sex unions to private vows and common law, the surprising diversity of a tradition* (New York: Seven Stories Press, 2011).

romanticizing of free choice is problematic. I agree that in many countries, including Canada, the ability, and then right to choose one's spouse have theoretically, legally, socially and rhetorically, become increasingly possible.²¹ However, as I argue in this thesis, the existence of this rhetorical freedom is fundamentally constrained in reality, for the dichotomy between forced and free marriage is not so stark. Indeed, while it is certainly possible that 'love' can emerge from conditions that began with a lack of consent, as will be argued in this thesis, forced marriages can amount to 'slavery', and must be put on the continuum of constrained consent in the institution of marriage rather than constructed as the exception to the notion of free and full consent, as often implied in triumphalist discourses of progress of consent to marriage and marriage for love over time and space.

To some, recent cases, events and efforts to prevent forced marriages in Canada seem to have come out of nowhere. However, as this social history project argues, they are longstanding and have an important history. Our understanding of the rhetoric versus reality of forced marriage in Canada is incomplete so long as we ignore that history. Indeed, although Canadian officials have tended to focus on forced marriages in the international development arena (echoing contemporary politics), or to target specific domestic groups as exceptional problems – namely Aboriginals, immigrants and Muslims through uneven patterns of “othering” – forced marriages involving Canada as a source, transit and destination country are not new and are certainly not unique to the last twenty years. Like the institution of marriage, forced marriage pre-dates recorded history. In fact,

²¹ To be sure, the ability and right to choose one's spouse have varied and continue to vary per region and other factors, including gender, class, culture and religion.

involuntary marriages have been a transhistorical preoccupation. For instance, lack of consent to marriage is explored in medieval law, the topic of numerous historical plays, a recurrent theme in historical and contemporary novels, and a longstanding topic of concern in human rights reports, biographies and non-fiction monographs.²²

This holds true for Canada, where, despite the assumption of consent, individuals have been forced into unions without their free and full consent in various ways. As my data and the findings that follow in Chapters I to V demonstrate, in the period after consent was made a requisite element in marriage, parents, family, government officials and community members in Canada have duped men, women and children into travelling to destinations in Canada and abroad where they have married them against their will; individuals have been coerced to marry as a result of religious pressure; some have been trafficked and enslaved in marriage; some have been forced to marry as a result of immigration/sponsorship prerogatives; others have been adopted, only to be forced to marry; some have been forced to marry for assimilation purposes; others have come to Canada as refugees following servile and forced marriages in conflict zones; and some individuals have claimed asylum based on the circumstances of their marriages and fears of being forced to marry against their will. Through both clear-cut and complex cases of forced marriage, I tease out a fundamental paradox and problem: that is, that by accepting

²² See, for example, “Female Wards and Marriage: A Question of Consent” in Noel James Menuge, *Medieval English Wardship in Romance and Law* (Boydell & Brewer, 2001); Launcelot Temple Esq, *The forced marriage, a tragedy* (T. Cadell, 1770); Emily Bronte’s *Wuthering Heights* (Toronto: The Macmillan Company of Canada Limited, 1960); Sarah Craven’s *The Forced Marriage* (Don Mills: Harlequin Enterprises Limited, 2013); 1926 *Slavery Convention*; United States Department of State, “Trafficking in Persons Report 2010,” 14 June, 2010, p. 15; Kathleen Barry, *Female Sexual Slavery* (NYU Press, 1984); Daphne Bramham, *The Secret Lives of Saints: Child Brides and Lost Boys in Canada’s Polygamous Mormon Sect* (Random House of Canada, 2009); and Ayan Hersi Ali, *Nomad* (Knopf Canada, 2010).

and assuming full and free consent to marriage is possible as outlined in laws and human rights instruments, Canadians have ignored, overlooked and denied the reality that in many cases structural dynamics, challenges and constraints (in spite of them) make full and free consent impossible.

Large social and legal changes transformed Canada between 1948 and 2008. As we will see in Chapters III to V, for persons in forced marriage situations, the reform of divorce laws in 1968 and the advent of no-fault divorce in 1986, both being measures providing them better means to exit their involuntary marriages, were arguably most significant.²³ The resulting changes in the structuring of society, namely the rise in divorce rates and unprecedented, arguably impossibly high expectations for one's spouse that have taken place alongside these reforms are the object of another study.²⁴ Here, it is significant to remember that the legal, theoretical and rhetorical right to choose who, why, when and how to marry – even as it is constrained by gender, culture, race, class, institutional structures, systems and other factors explored in varying degrees in this project, revealing fundamental limitations and the arguable impossibility of exercising this right in practice – did not exist for the vast majority of Canadian men, women and children in the past.²⁵ Nazli, her sister and other persons in forced marriage situations

²³ Before 1968, the only acceptable grounds for obtaining a divorce in Canada were cruelty and adultery. The *Canadian Divorce Act* of 1968 broadened the grounds for divorce, including for persons in forced marriage situations. It kept fault as grounds for divorce, but simplified the procedure for obtaining a divorce. Then, in 1986, the *Canadian Divorce Act* was amended such that the “fault” requirement was no longer needed to obtain a divorce. As a result of both acts, divorce rates in Canada surged.

²⁴ High divorce rates constitute one example. Coontz's findings suggest that expectations in “love marriages” are without historical precedent and have had “unanticipated and revolutionary consequences that have since come to threaten the stability of the entire institution” of marriage. See *Ibid.*, 23.

²⁵ One possible exception noted by scholars is the case of Cécile Pasteur of Montreal. By virtue of her position as an affluent white woman, Pasteur had the alleged option to marry for love. To her mother and brother's displeasure, she turned down her “rich but unloved suitor,” stating “I will never give my hand

throughout this study are among the thousands of Canadians who have been forced to give their hand in marriage against their will between 1948 and 2008. As we will see, all of these cases violate laws, and some meet the threshold of slavery.

In spite of the reality of the longstanding history and continued existence of forced marriages in Canada, they have not figured centrally or even peripherally in most critical historical perspectives on and discussions of marriage. I embarked on this case study of Canada in transnational context to further the understanding of the history of forced marriage in general, and in Canada in particular in the post-World War II period. For Canadians and global actors who exchanged ideas, participated in events, actions and conversations involving forced marriages, the period under study in this project began and ended with fundamental historical breaking points (or “key events” to use Braudel’s *histoire événementielle* vs. *longue durée* distinction referred to above). I selected 1948 and 2008 as bookends on the basis of my specific interests, what I found during my research, what I was told by respondents during oral interviews, and what I heard from activists.

The year 1948 is a useful starting point for this study as it saw the first formal, official recognition by the Canadian state of the right of all people to enter a marriage with full and free consent. In 1948, Canada signed the *Universal Declaration of Human Rights* (UDHR), the first international consensus document recognizing (under Article 16:2) that “Marriage shall be entered into only with the free and full consent of the

without giving my heart.” Abbott, *A history of marriage*, 9, 10, 15, 94. Also see Cécile Pasteur to Julie Duvernay, Montreal, April 22, 1817, quoted in Françoise Noël, *Family Life and Sociability in Upper and Lower Canada, 1780-1870* (Montreal and Kingston: McGill-Queen’s University Press, 2003), 19.

intending parties.”²⁶ I am well aware of the birth of other human rights institutions prior to the UDHR, and that the signing of the UDHR occurred over twenty years after Canada’s participation in discussions that led to the 1926 *Slavery Convention*, which is not unrelated to Canada ratifying the 1956 *Supplementary Convention* (with provisions on marriage) and passing significant domestic marriage law reforms, all of which are explored in Chapter III of this thesis. 1948 stands out, not because it is a conventional start date or seen by many as the birth of human rights, but rather because this date highlights Canada’s increasing interaction on the international stage and the interplay between the global and local at an important post-war moment in Canadian history. Unlike the 1926 *Slavery Convention*, the UDHR sparked national debates on civil rights and freedoms in Canada at a time when minorities and all women had just received the right to vote. The debates that ensued led to the birth of important social justice and civil liberty movements, including second wave feminism, which as we will see in Chapter IV, took on lack of consent and the substantive inequalities for women and girls endemic to the institution of marriage.²⁷ The year 2008, sixty years later, is a compelling endpoint, for it significantly changed the forced marriage landscape in Canada. Here too the interplay between the global and local was significant. In 2008, Canada’s first international conference on forced marriage took place in Toronto. As we will see, this international event organized by a domestic legal clinic brought together key actors across Canada and abroad. It stands out, for it led to Canada’s Network of Agencies

²⁶ See UN GAOR, 3d Sess. at art. 16.1 and 16.2, U.N. Doc. A/RES/217A(111) (1948).

²⁷ Dominique Clément, Will Silver and Daniel Trottier, *The Evolution of Human Rights in Canada* (Canadian Human Rights Commission: Minister of Public Works and Government Services, 2012), 77p.

Against Forced Marriage, a first domestic tool kit and research report²⁸ on the topic. This conference and the initiatives that grew out of it launched a robust conversation in the country on the need for an action plan, culminating in a bill to criminalize forced marriage in Canada that became law in June, 2015.

In order to understand the history of forced marriage through the lens of Canada as a source, transit and destination country during the period leading up to the 1948 UDHR and 2008 Conference in Toronto, this dissertation explores three central multi-part research questions: 1) What role has the Canadian state played in regulating consent to marriage in Canada, and in framing laws to combat forced marriages? More specifically, in putting Canada under the microscope with respect to forced marriage and its regulation, how can we explain this practice?; 2) What forms of forced marriage took place between 1948 and 2008? Have forced marriage cases, discourses and practices in certain communities in Canada received more attention than others?; 3) What insights can individual cases and testimonies provide about forced marriage in Canada and the social contexts in which policies are framed? More specifically, how have individuals and sub-groups from communities across the country explained the causes of this phenomenon, how have they responded to it, and what do they have to say? In my research, I explore how in three distinct periods (1948-1968, 1968-1986 and 1986-2008) marriage without consent comes to be viewed as a problem. I explain the variety of primary and secondary sources, oral history methodology, data analysis and findings used to corroborate and triangulate my answers to these questions in Chapter I. My findings build on and

²⁸ Anis, Konanur and Mattoo, “The Incidence of Forced Marriage in Ontario,” 2013.

contribute to academic literature and theory that have informed this project in important, varying ways.

Forced Marriage History From Below

First and foremost, this thesis is a social history project, influenced by oral history studies and methodologies, slavery studies, marriage history, women's history and transnational history, triangulated and corroborated with primary and secondary sources. More and more, historians acknowledge that where issues, specifically those involving violence or abuse largely impacting women and girls, have been ignored throughout the ages, oral history is a useful methodology for hearing, listening to, documenting and recovering their experiences.²⁹ In particular, interviews and discussions can shed light on unheard perspectives, struggles, movements, organizations, discontents, rationales, thoughts and actions of individuals and communities, giving voice to themes that have not been considered.

As the saying goes, "There is no history without oral history".³⁰ Oral history is the oldest form or "pre-form" of history as we know it. According to Walter Benjamin, it is our task "to study not just the mechanics of the material event, but the events of the remembering and the forms of the telling – the conditions under which our historical materials have been created."³¹ Since the 1960s, historians have increasingly recognized that writing history "from the bottom up" necessitates recording the histories of "ordinary

²⁹ See, for example, Joan Sangster, "Telling our stories: Feminist debates and the use of oral history," *Women's History Review*, 1994, vol. 3, no. 1, 5-28.

³⁰ Marta Kurkowska-Budzan, and Krzysztof Zamorski, eds., *Oral History: The Challenges of Dialogue* (Amsterdam; Philadelphia: John Benjamins Pub., 2009), xi.

³¹ Cited in Pamela Sugiman, "Passing Time, Moving Memories: Interpreting Wartime Narratives of Japanese Canadian Women," *Histoire Sociale/Social History*, 36, 73, (2004), 78.

people.”³² The outpouring of scholarly literature on oral history has guided this study.³³ It has informed my scholarly analysis of who is “doing the telling” and why on forced marriages in Canada, which voices can speak, as famously asked by Gayatri Spivak³⁴, and, perhaps most importantly, which voices can be heard. I add to the field of Canadian oral histories by underscoring what “ordinary people” affected by forced marriages have to say.

The first-hand narratives in this study do many things. They reveal diverse experiences within the collective story. They help explain what Joy Parr has called the “everyday” or the “normal”.³⁵ They account for and complement experiences that are not in the historical record or in typical mainstream sources. They challenge the dominant portrayal of those who experience forced marriage as silent, unresisting, and uncritical. They raise new questions about the role of memory, self-representation, silences,

³² Alan Nevins advanced the idea of oral history as early as 1938, and founded the Oral History Research Office at Columbia University in 1948. For an overview of the first thirty years of the oral history movement, see *Envelopes of Sound: The Arts of Oral History* (Chicago: Precedent Publishing, 1985).

³³ I found the following particularly useful: Lynn Abrams, *Oral History Theory* (Milton Park, Abingdon, Oxon; New York: Routledge, 2010); Susan H. Armitage, Patricia Hart and Karen Weathermon, eds., *Women's Oral History: The Frontiers Reader* (Lincoln: University of Nebraska Press, 2002); David K. Dunaway, Willa K. Baum, eds., *Oral history: An Interdisciplinary Anthology* (Walnut Creek : AltaMira Press, 1996); David Henige, *Oral Historiography* (London, New York, Lagos: Longman, 1988); Celia Hitch and Jay Norris, *Conducting an oral history interview* (Willowdale: Ontario Historical Society, 1988); James Hoopes, *Oral History: An Introduction for Students* (Chapel Hill: The University of North Carolina Press, 1979); Ken Howarth, *Oral History* (Stroud, England: Sutton Pub., 1999); Patricia Leavy, *Oral History* (Oxford, New York: Oxford University Press, 2011); James Olney, *Memory & Narrative: The Weave of Life-Writing* (Chicago and London: University of Chicago Press, 1998); Robert Perks and Alistair Thomson, *The Oral History Reader*, 2nd ed. (New York: Routledge, 2006); Ken Plummer, *Documents of Life: An Introduction to the Problems and Literature of a Humanistic Method* (London: George Allen & Unwin, 1983); Alessandro Portelli, “What makes oral history different,” in *The Death of Luigi Trastulli and Other Stories: Form and Meaning in Oral History* (Albany: State University of New York Press, 1991), 45-58; Donald A. Ritchie, *Doing Oral History: A Practical Guide* (Oxford: Oxford University Press, 2003); Lee Smith, *Oral History* (New York: Ballantine Books, 1984); Stephen Caunce, *Oral History and the Local Historian* (London and New York: Longman, 1994); Paul Richard Thompson, *The Voice of the Past: Oral History*, 3rd ed. (New York: Oxford University Press, 2000).

³⁴ Cited in Morgan, *The Feminist Reader*, 26.

³⁵ Joy Parr, *The Gender of Breadwinners: Women, Men, and Change in Two Industrial Towns, 1880-1950* (Toronto: University of Toronto Press, 1990).

contradictions, inconsistencies, and multiple truths that speak to the messiness of human relations, and the limitations/challenges inherent in doing oral history.³⁶ They bolster the call in the field to recognize that “transcripts constitute a potentially fruitful data resource of no less importance than [other] datasets.”³⁷ Finally, as has been ascertained by social historians and First Nations scholars like Julie Cruikshank, they serve a “didactic social function,” can construct a more democratic record of the past, and maintain human connections across class, race and gender.³⁸

This dissertation therefore seeks to contribute to work and analysis on what Sherene Razack has described as “stories of experience on the margins” that act “as windows into the contradictions that we face every day between what we are told is reality, and what we experience.”³⁹ Critical race analysis is essential to understanding how the regulation of marriage without consent in Canada has played on particular stereotypes and sometimes been motivated by racist ideas. This informs my historical analysis.⁴⁰ Like Razack, I seek to recognize the social hierarchies that exist in forced marriage narratives and “pay as much attention to *how* we know, as we do to *what* we

³⁶ On this theme, see the following: Michael Frisch, “Oral History and “Hard Times,” a Review Essay,” *The Oral History Review*, Vol. 7 (1979), 70-79; Ronald J. Grele, “Movement Without Aim: Methodological and Theoretical Problems in Oral History,” in *Envelopes of Sound*, 127-154.

³⁷ Connor McGrath in Kurkowska-Budzan and Zamorski, *Oral History*, 2009.

³⁸ Julie Cruikshank, “Oral History, Narrative Strategies, and Native American Historiography: Perspectives from the Yukon Territory, Canada,” in *Clearing a Path: Theorizing the Past in Native American Studies*, ed., Nancy Shoemaker (London: Routledge Press, 2002), 3-28. Also see “History and the Community” in Paul Thompson, *The Voice of the Past: Oral History* (Oxford: Oxford University Press, 1978), 1-18; J. Edward Chamberlin, “Doing Things with Words: Putting Performance on the Page” in *Talking on the Page: Editing Aboriginal Oral Texts*, eds. Laura Murray and Karen Rice, (Toronto: University of Toronto Press, 1999), 69-90.

³⁹ Sherene Razack, *Looking White People in The Eye: Gender, Race, and Culture in Courtrooms and Classrooms*, (Toronto: University of Toronto Press, 1998), 55.

⁴⁰ While critical race theory will not constitute a main framing mechanism, I build on and take inspiration from relevant insights from that literature.

know.”⁴¹ While the law and widely accepted mores and ethics accepted by governments and societies near and far make it acceptable to stand up for oneself and/or others in forced marriage situations, as we will see, persons in forced marriages and opponents of forced marriage have felt deeply hurt and rejected as “problems” in their families and communities across Canada and beyond.⁴² W.E.B. Dubois, civil rights activist and professor of history, sociology and economics, famously asked “How does it feel to be a problem?”⁴³ Informed by oral history studies and methodologies, this dissertation includes the views of these particular “forced marriage problems.”

Forced Marriage as Slavery

One of my central aims is to insert analysis of forced marriages in Canada into discussions of world-wide manifestations of contemporary slavery.⁴⁴ As we will see in Chapter II, cases of forced marriage, marriage trafficking and of marriages connected to forced labour and debt bondage that fall under the definitions of slavery and human

⁴¹ Ibid., 53.

⁴² Individuals standing up for themselves or others in forced marriage situations are viewed as “problems” for speaking out, and must contend with the individuals who believe forced marriage is acceptable. They thus have “problems” from both sides. By “opponents” to forced marriage, I mean individuals who disagree with the practice.

⁴³ W.E.B. Dubois, *The Souls of Black Folk* 1903© (Pennsylvania State University, 2006), 8.

⁴⁴ The rich field of scholarship on slavery has produced a range of perspectives, findings and insights on numerous themes that intersect with this project, including colonial legacies, notions of consent, choice, freedom, resistance, migration/movement, labour, human rights and development. See, for example, Suzanne Miers, *Slavery in the Twentieth Century* (Walnut Creek: Altamira Press, 2003), Benedetta Rossi, ed., *Reconfiguring Slavery: West African Trajectories* (Liverpool: Liverpool University Press, 2009); Joel Quirk, *The Anti-Slavery Project: From the Slave Trade to Human Trafficking* (Philadelphia: University of Pennsylvania Press, 2011); Ato Quayson and Antonela Arhin, *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows* (New York: Routledge, 2012); Kevin Bales, *Ending Slavery* (Berkeley: University of California Press, 2007); Kevin Bales, *Understanding Global Slavery: A Reader* (Berkeley: UC Press, 2005); Kevin Bales, *Disposable People*, (Berkeley: University of California Press, 2004); John Winterdyk, Benjamin Perrin and Philip Reichel, *Human Trafficking: Exploring the International Nature, Concerns, and Complexities* (NW: CRC Press, 2011); Benjamin Perrin, *Invisible Chains: Canada’s Underground World of Human Trafficking* (Viking Canada, 2010).

trafficking have, by and large, not been studied within work on human trafficking and contemporary enslavement in Canada and abroad.⁴⁵ Since the 1990s, awareness and acknowledgement of the existence of slavery and trafficking in Canada have grown. However, studies on Canada, just as others within the field of contemporary slavery studies, are marked by an over-emphasis on human trafficking for the purpose of commercial sexual exploitation, diverting attention from other forms of contemporary slavery, namely debt bondage, child soldiery, wartime enslavement, forced labour, hereditary slavery, traditional slavery, and, most significant for this study, manifestations of enslavement connected to marriage.⁴⁶ This over-emphasis is politically charged, and connected to prostitution debates over the last thirty years.⁴⁷

This thesis seeks to remedy the lack of conceptual clarity when it comes to cases of forced marriage. The latter are often perceived as borderline or on the periphery of what scholars recognize or define as “slavery,” a term whose meaning has become

⁴⁵ Two exceptions are: Benjamin Lawrance and Richard Roberts, eds., *Trafficking in Slavery's Wake: Law and the Experience of Women and Children in Africa* (Ohio: Ohio University Press, 2012) and Andreas Schloenhardt and Jarrod Jolly's article “Honeymoon from hell: human trafficking and domestic servitude in Australia,” *Sydney Law Review*, Vol. 32 (2010), 671-692.

⁴⁶ For instance, editors Alison Brysk and Austin Choi-Fitzpatrick and contributors to *Human Trafficking and Human Rights: Rethinking Contemporary Slavery* (Philadelphia: University of Pennsylvania Press, 2012) highlight the vagueness of human trafficking legislation, and the conflation of human trafficking with pimping.

⁴⁷ Studies on this include Elizabeth Bernstein, “ Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Anti-Trafficking Campaigns,” *Signs: Journal of Women in Culture and Society* 36, 1 (2010); Kamala Kempadoo, *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights* (Boulder: Paradigm Publishers, 2005); Elizabeth Bernstein, “What’s Wrong with Prostitution? What’s Right with Sex-Work? Comparing Markets in Female Sexual Labor,” *Hastings Women’s Law Journal*, Vol. 10, no. 1: 91-119; *Rethinking Human Trafficking*, Denise Brennan and Pardis Mahdavi, eds. (Durham: Duke University Press, 2012); Jo Doezma, *Sex Slaves and Discourse Masters: The Construction of Trafficking* (London: Palgrave Books, 2010); Kathryn Farr, *Sex Trafficking: The Global Market in Women and Children* (Portland: Worth Publishing, 2005); Marie Segrave, *Sex trafficking: international context and response* (Cullompton, Devon: Willan Pub., 2009).

increasingly unclear.⁴⁸ As a result of what Suzanne Miers has coined “the anti-slavery game,” – the misuse of anti-slavery campaigns by various powers to further their political, economic and ideological interests – the institution of slavery has become a “catchall” term synonymous with, and effective in dramatizing extreme deprivation and exploitation more generally.⁴⁹ Miers has underscored how this game has persisted within the context of bilateral and multilateral agreements involving Britain, the League of Nations (LON) and the United Nations (UN), some of which I examine in Chapter III. From the Second World War onwards, UN bodies and specialized agencies have been floundering “in a rather vague morass.”⁵⁰ This study clarifies what forms of marriage legally constitute slavery, highlighting the misinformation about the incidence of this crime in Canada, and the misguided assumption that it has only been an issue of concern in certain groups.⁵¹ In doing so, I distinguish between forced marriage in times of war and in times of peace⁵², clarify where and under what conditions marriage without

⁴⁸ Miers, *Slavery in the Twentieth Century*, xii, xiii, 317.

⁴⁹ Ibid.

⁵⁰ Ibid., 398.

⁵¹ Valuable studies that inform my understanding on the definition of slavery include: Suzanne Miers, “Slavery: A Question of Definition,” in *The Structure of Slavery in Indian Ocean Africa and Asia*, (London: Frank Cass 2003), 1-16; Paul Lovejoy, *Transformations in Slavery: A History of Slavery in Africa* (Cambridge: Cambridge University Press, c. 1987; 2nd and revised edition, 2000; 3rd edition, 2011); Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge: Harvard University Press, 1982); Claude Meillasoux, *Anthropology of Slavery* (New York: Athlone Press, 1991), Igor Kopytoff and Suzanne Miers, “African ‘Slavery’ as an Institution of Marginality,” in Miers and Kopytoff, *Slavery in Africa: Historical and Anthropological Perspectives* (Wisconsin: University of Wisconsin Press, 1977); Jean Allain, ed., *The Legal Understanding of Slavery: From the Historical to the Contemporary* (Oxford: Oxford University Press, 2012); Bales, *Disposable People*, 1999; Rossi, *Reconfiguring Slavery*, 2009.

⁵² I recognize that conflict also exists in times of peace. A growing body of literature exists on forced marriage in times of war and times of peace. See, for example, Annie Bunting, “‘Forced Marriage’ in Conflict Situations: Researching and Prosecuting Old Harms and New Crimes,” *Canadian Journal of Human Rights* 1:1 (2012). From April 4-6 2013, Annie Bunting, Benjamin Lawrance and Richard Roberts organized a conference entitled “Forced Marriage Symposium – Interdisciplinary Reflections” at the Rochester Institute of Technology. I was a rapporteur at this event, where experts on forced marriage in Africa began a project putting current forced marriage debates, both in times of war and relative peace, into

consent and slavery are coupled⁵³, and identify how those in forced marriages recognize their own situations. Some use the term slavery to describe their lived experience⁵⁴; others do not.

Through this dissertation I also aim to contribute to work by scholars who have begun to challenge studies that present historical and contemporary manifestations of slavery as if they are isolated, independent phenomena.⁵⁵ As Joel Quirk has stressed, practices that fall under the rubric of “new slavery,” including forced marriages, “all have longstanding historical roots, and are not reducible to distinctively modern developments.”⁵⁶ This research study on forced marriages involving African, European, North American, South American, Middle Eastern and Asian diasporic communities complicates notions of ‘choice,’ ‘consent,’ and ‘freedom.’

Significantly, through the use of first-hand narratives, I ask the following important question: how is ‘consent’ to marriage to be understood within unequal

richer historical context. Their collection, *Marriage by Force? Contestations over consent and coercion in Africa*, is forthcoming with Ohio University Press (2016). Videos and more information can be found at <http://tubman.info.yorku.ca/research/contemporary-slavery/researchers-talk-about-forced-marriage/>

⁵³ To be clear, this dissertation looks at slavery as one (among many) subsets of forced marriage.

⁵⁴ Here, I would like to clarify that the individuals I interviewed who refer to their experiences as slavery, did not mean slavery in the euphemistic “I feel like a slave” sense. They used the term in the sense of UN and other definitions of slavery as a crime against humanity. The *1926 Slavery Convention* defines slavery as: “The status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”. (1926 Slavery Convention, Article 1:1) Definitions of slavery vary based on the discipline in question, be it history, sociology, anthropology, law, and beyond. In general, persons enmeshed in this crime against humanity (as recognized by the Durban Accord) are viewed as human chattel, seen as property, under the threat or use of violence, under the control of another/others, experience social ostracisation, are marginalized in relation to social mobility, and often outsiders. All are coerced and exploited. In cases of forced marriage that meet the threshold of slavery, the person may be purchased, inherited or transacted, and their sexuality, reproductive capacities and/or labour power are at the disposal of their exploiter(s).

⁵⁵ Joel Quirk has rightly critiqued the “old” vs. “new” model presented by Kevin Bales for downplaying historical dimensions of current problems.

⁵⁶ See Joel Quirk “The Anti-Slavery Project: Linking the Historical and Contemporary,” *Human Rights Quarterly*, 28 (2006) 579; and Quirk, *The Anti-Slavery Project*, 2011.

contexts and social structures, including the institution of slavery, the operation of sexism, patriarchy, and socialization from childhood for forced marriage?⁵⁷ I argue that in many cases real, full and free meaningful consent is not possible, and most often, ‘consent’ must be understood on a continuum of degrees of consent. As a guiding principle based on feedback from respondents and those who have experienced forced marriage, this study does not take consent to marry for granted “without looking for evidence that it has actually been given.”⁵⁸ Inspired by this principle from political and moral philosophy (further study of which is outside this project’s scope), I underscore inherent difficulties, challenges and limitations with the concept of consent when applied to forced marriage. As identified by Carole Pateman: “we lack a language through which to help constitute a form of personal life in which two equals freely agree to create a lasting association together.”⁵⁹ Indeed, as Pateman argues, “Consent as ideology cannot be distinguished from habitual acquiescence, assent, silent dissent, submission, or even enforced submission.”⁶⁰ This thesis agrees with Pateman and stresses, like her, that

⁵⁷ A rich literature on limited and constrained consent exists in other fields, particularly political philosophy and feminist theory. See, for example, *Illusion of Consent: Engaging with Carole Pateman*, eds. Daniel I. O’Neill, Mary Lyndon Shanley, and Iris Marion Young (University Park: Penn State UP, 2008). On the question of consent, I am indebted to the following sources: Angeliki E. Laiou, ed., *Consent and coercion to sex and marriage in ancient and medieval societies* (Washington, D.C.: Dumbarton Oaks Research Library and Collection, 1993); William H. Woestman, ed., *Simulation of marriage consent: doctrine, jurisprudence, questionnaires* (Ottawa : Faculty of Canon Law, Saint Paul University, 2000); and Holly Brewer, *By Birth or Consent: Children, Law and the Anglo-American Revolution in Authority* (Chapel Hill and London: University of North Carolina Press, 2005).

⁵⁸ Michael Walzer, *Obligations: Essays on Disobedience, War and Citizenship* (New York: Simon and Schuster, 1971), viii.

⁵⁹ Carole Pateman, “Women and Consent,” *Political Theory*, Vol. 8, No. 2 (May, 1980), 164. Pateman examines and builds on modern consent theory.

⁶⁰ *Ibid*, “Women and Consent,” 150

“Unless refusal of consent or withdrawal of consent are real possibilities in the context in question, we can no longer speak of ‘consent’ in any genuine sense.”⁶¹

As we will see in Chapter II, varying degrees of control, pressure, persuasion, threat and/or force are exercised in cases of forced marriages that meet the threshold of slavery. However, a general silence about those perpetrating forced marriages that amount to slavery, and the impacts they have on individual and community relations mark the field of contemporary slavery studies.⁶² While interviewing and studying perpetrators⁶³ were not central goals or foci of this study, the examples of rationales of individuals, families, groups and communities in this thesis who perpetrated forced marriages that meet the threshold of slavery between 1948 and 2008 contribute to the growing literature focused on understanding perpetrators of enslavement.

This project is also inspired by literature on slave responses and resistance. Slavery scholars have stressed agency, and how individuals constantly shape and reshape the spaces around them. As Ira Berlin has argued, “Slavery was never made, but instead was continually remade, for power – no matter how great – was never absolute, but always contingent.”⁶⁴ As demonstrated through case studies throughout this project, the experiences of those in forced marriages are marked by both cooperation as well as contestation within continuously changing relationships. Here, Hegel’s classic

⁶¹ Ibid.

⁶² Austin Choi-Fitzpatrick, an assistant professor at the School of Public Policy at Central European University and the co-editor of *From Human Trafficking to Human Rights: Reframing Contemporary Slavery* (Philadelphia: University of Pennsylvania Press, 2012) is currently conducting pioneering research on attitudes and behaviors of slaveholding classes in India.

⁶³ I use this term for those who identify or are identified as responsible for forced marriages in the thesis.

⁶⁴ Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge: Harvard University Press, 1998), 3.

explanation of the master-slave dialectic speaks to the two sidedness of the relationship between perpetrators and victims of forced marriage.⁶⁵ His *Phenomenology of Spirit* describes the encounter between two self-conscious beings who engage in a struggle, wherein one seeks to enslave the other, only to find that this does not lead to having full control over this individual. Scholars and feminists, including examples I analyse in Chapter IV, have found parallels between the institutions of marriage and slavery, and documented attempts to control and exploit women and girls through the institution of marriage. As Squire notes, however, a constant catch-22 has arisen in the writings of men who have perpetrated forced marriages against women: “women must be controlled, but women can’t be controlled.”⁶⁶ In theory, a slave is nothing but an extension of his or her master. However, just as a master must recognize their slave as human, a spouse/family/community must recognize the person – be it a women, man or child – in a forced marriage situation as human, and these individuals exercise agency, leading to tension between theory and practice. Like the slave master, the spouse/family/community has to provide their spouse with concessions. Therefore, he or she is often aware of the agency of the person(s) in a forced marriage situation. That said, the tendency to write and talk about issues of enslavement or exploitation in forced marriage situations as if it is the task of scholars to “give” the slaves or survivors of non-consensual marriages “back their agency” is problematic.⁶⁷ I work to avoid this trap and general trope by focusing on complexities at play within acts of acceptance, acquiescence, contestation

⁶⁵ See G.W.F. Hegel, *Phenomenology of Spirit*, translated by A.V. Miller (Oxford: Clarendon Press, 1977).

⁶⁶ Susan Squire, *I DON'T: A Contrarian History of Marriage*. (New York: Bloomsbury, 2008), 9.

⁶⁷ Walter Johnson, “On Agency,” *Journal of Social History*, Vol. 37, Number 1, Fall 2003, 113.

and resistance to forced marriage. These nuances are particularly clear via Amina's case study in Chapter V. In addition, I distinguish day-to-day coping mechanisms and acts of resistance from isolated ones, and individual responses from collective responses.⁶⁸

Inserting Forced Marriage into Women's, Marriage, and Transnational Histories

In addition to being a history of forced marriage from below with the imperative of inserting forced marriages into discussions of contemporary slavery through a reliance on legal sources, this thesis acknowledges and is a response to the need to address the incomplete record of the past on women and gender, to insert forced marriage into the body of work on marriage, and to ground this phenomenon within transnational, global world history.⁶⁹

I adhere to the following general distinctions between women's, feminist and gender history: *women's history* – the history of women –, *feminist history* – history infused by a concern of oppression of women and girls –, and *gender history* – broadly the interaction of femininity and masculinity.⁷⁰ Susan Brownmiller's study *Against Our*

⁶⁸ Sources I have benefited from on resistance include the following: Michele Johnson, "‘Problematic Bodies’: Negotiations and Terminations in Domestic Service in Jamaica, 1920-1970," *Left History*, (Special Issue: Domestic Service) Vol. 12, No. 2, Fall/Winter 2007, 84-112; Michele Johnson and Brian Moore, "‘Married but not Parsoned’: Attitudes to Conjuality in Jamaica, 1865-1920," in *Contesting Freedom: Control and Resistance in the Post- Emancipation Caribbean*, Gad Heuman and David Trotman, eds. (London: Macmillan, 2005); Michael Craton, "Forms of Resistance to Slavery," in (F.W. Knight, ed.) *General History of the Caribbean – UNESCO: The Slave Societies of the Caribbean*, Vol. 3, 222-270; Robin D. G. Kelly, *Race Rebels: Culture, Politics and the Black Working Class* (New York: The Free Press, 1994); James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven: Yale University Press, 1990).⁶⁸ Kelly argues that the history of oppressed people cannot be understood without reference to "infrapolitics," daily acts that have a cumulative effect on power relations. In *Domination and the Arts of Resistance: Hidden Transcripts*, James C. Scott uses the notion of "infrapolitics" to describe what is created through the "hidden transcripts" in aggrieved communities and expressed through culture, daily acts of resistance and survival.

⁶⁹ Note: by focusing on the transnational nature of forced marriages, I by no means mean to suggest that this is only a 'foreign' issue.

⁷⁰ Morgan, *The Feminist Reader*, 3-4.

Will: Men, Women and Rape was a useful source from the start of this project, for it provides context for feminist discontent and work to end forced marriage and slavery in marriage that took place in Canada in the 1970s following (as analyzed in Chapters IV and V). In the 1970s, Brownmiller put forward the contention that the forcible abduction and rape of the female by the male is “the earliest form of a permanent, protective conjugal relationship, the accommodation called mating that we now know as marriage.”⁷¹ Further, she argues that men’s violent capture and rape of women led to a full blown male solidification of power through marriage: patriarchy.⁷² In Brownmiller’s view, concepts of hierarchy, slavery and private ownership flowed from this risk of rape without a protector, and could only be predicated upon the initial subjugation of women. Similarly, in her work on the historical trafficking of women, anthropologist Gayle Rubin argues that marriages are a most basic form of gift-exchange through which women are transacted, and provide conduits of a relationship between men rather than partners to it.⁷³ Informed by the early work of Brownmiller and Rubin and sources on forced marriages in Canada analysed in Chapters IV and V, I see forced marriage as a symptom of patriarchy, which is deeply pervasive and tied to power, control, dominance and violence. However, in doing so, I agree with Sheila Rowbatham that the concept of “patriarchy” is not the single cause for female subordination. Indeed, as can be seen in this study of forced marriage, “women themselves are part of the diverse historical

⁷¹ Susan Brownmiller, *Against Our Will: Men, Women and Rape* (New York: Fawcett Columbine, 1993 c1975), 17.

⁷² *Ibid.* To be clear, I want to clarify that patriarchy is not only solidified through marriage. While my focus in this project is on its links to marriage, marriage is merely one site where control of women through male domination has taken place.

⁷³ Gayle Rubin, “The Traffic in Women: Notes on the ‘Political Economy’ of Sex,” in *Toward an Anthropology of Women*, ed. Rayna R. Reiter (New York: Monthly Review, 1975), 173.

operations of patriarchy”.⁷⁴ The fact that women are part of the patriarchal structure, in positions where they work for its maintenance, extends what constitutes patriarchy. As such, I agree with and stress the imperative call by Sally Merry Engle and others to go “beyond patriarchy” and focus on what Lori Girshick has called “questions of power over others”⁷⁵ more generally.

Through case studies and case law, my dissertation examines power dynamics, and the complexities at play in terms of the gendering of spaces, particularly for some women and girls in forced marriage situations who are restricted to the point of being locked or incarcerated in the home.⁷⁶ To be clear, when using the term “gender,” I agree with analyses by Joan Scott and others that meanings of “men” and “women” as categories of identity have been socially constructed.⁷⁷ Further, I accept that “gender influences every aspect of social, political, and personal life, power structures and relations,”⁷⁸ and my study outlines how – like the operation of gender, race, class, ethnicity, nationality, religion, culture and sexuality – individual and group identities are

⁷⁴ Morgan, *The Feminist Reader*, 6. Also see Judith Bennett, “Feminism and History,” *Gender and History*, 1:3 (1989: 251-272; Sheila Rowbotham, “The Trouble with ‘Patriarchy,’” and Sally Alexander and Barbara Taylor, “In Defence of ‘Patriarchy,’” *New Statesman*, December 1979.

⁷⁵ As Merry points out, “The feminist framework which looks to patriarchy as the explanation for violence also relies on the binary of powerful males/powerless females and does not describe the complexities of violence or the experience of violence within gendered relationships.” Merry, *Gender Violence*, 2009, 18.

⁷⁶ Anna Clark’s well known book *The Struggle for the Breeches* (Berkeley: University of California Press, 1995), speaks to “the private sphere of marriage” satirically depicted in popular literature as a bitter contest in which wives, demanding to be treated better and with more equality try to “rob” husbands of their “manly” control. Work on the concept of “separate spheres,” advanced by feminist historians has been useful as I have mapped space restrictions within forced marriages. See Morgan, *The Feminist Reader*, 7-9.

⁷⁷ Joan Scott, “Gender: A Useful Category of Analysis,” *American Historical Review*, 91 5 (December 1986), revised in her *Gender and the Politics of History* (Columbia University Press, New York, 1988), 28-50. Like Scott, Denise Riley and Judith Butler, among others, have affirmed the centrality of language in the creation of categories and understanding of historical meaning.

⁷⁸ Agnès Callamard, *A Methodology for Gender-Sensitive Research* (Canada: Amnesty International and the International Centre for Human Rights and Democratic Development, 1999), 19.

not separate categories, but continually interact with and change one another. Further, I agree that we cannot ignore men or how masculinity and femininity are performed. A rich body of work has emerged urging us to remember that gender is not synonymous with women. Indeed, manliness and masculinity are also social constructs that do not exist in isolation from womanliness, femininity, race, ethnicity, sexuality, etc.⁷⁹ This study includes males in forced marriage situations. It also analyses instances in which men are witnesses to cases as family or community members, or involved as the perpetrators of forced marriages. Lastly, I interviewed men and include a few cases in which men have been forced into marriages on the basis of their rejection of heteronormative sexuality.⁸⁰

I have taken inspiration from the linguistic turn, with its emphasis on language and discourse, and believe it provides a useful approach for studying forced marriages and relations between the “genders” in situations of forced marriage. I agree with the

⁷⁹ Important studies on masculinities from which I have taken inspiration include Mark C. Carnes and Clyde Griffen, eds., *Meanings for Manhood constructions of masculinity in Victorian America* (Chicago: University of Chicago Press, 1990); Michael Roper and John Tosh, eds., *Manful Assertions: Masculinities in Britain since 1800* (London; New York: Routledge, 1991); Robert Connell, *Masculinities* (Berkeley: University of California 1995); Anna Clark, “Domesticity and the Problem of Wifebeating in Nineteenth-Century Britain: Working-Class Culture, Law, and Politics,” in Shani D’Cruze, ed., *Everyday Violence in Britain, 1850-1950: gender and class* (Harlow: Longman, 2000), 27-39; Roger Horowitz, ed., *Boys and Their Toys? Masculinity, Technology, and Class in America* (New York; London: Routledge, 2001); Stefan Dudink et al., eds., *Masculinities in Politics and War: gendering modern history* (Manchester & New York: Manchester University Press; Palgrave, 2004); Ava Baron, “Masculinity, the Embodied Male Worker, and the Historian’s Gaze,” *International Labor and Working-Class History*, 69, (Spring 2006): 143–160; Craig Heron, “Boys Will Be Boys: Working-Class Masculinities in the Age of Mass Production,” *International Labor and Working-Class History*, 69, (Spring, 2006): 6-34; Stephen Robertson, “‘Boys, of Course, Cannot be Raped’: Age, Homosexuality, and the Redefinition of Sexual Violence in New York City, 1880-1955,” *Gender and History*, 18, 2 (August 2006): 389-416; John Clarke et al., eds., *Working-Class Culture. Studies in History and Theory* (London & New York: Routledge, 2007).

⁸⁰ Petrimoulx, who is trans, fled to Canada from Mexico in 2005 and received refugee status on the basis of being a victim of a forced marriage and police brutality. See Rachel Browne, “Against their will: Inside Canada’s forced marriages”, *Maclean’s Magazine*, January 15, 2015, www.macleans.ca/news/canada/against-their-will/

need to deconstruct categories, including “male” / “female”, and the scholarly imperative to understand how meanings for these categories have been constructed. However, as argued later in this thesis, scholars like Kathleen Canning have rightly pointed out that readings by poststructuralists like Joan Scott can diminish and even lose sight of the material dimensions of oppression, namely the significance of bodily, physical suffering.⁸¹ In order to shine light and focus on these material dimensions, I look at language, but do not privilege a poststructuralist approach. Focusing on materiality, I consider, for example, the “double jeopardy” in terms of the exploitation of women and girls in forced marriages.⁸² Many are not only used for their labour power, including but not limited to domestic work, cleaning, cooking, and the organizing of events, but can also be repeatedly raped, beaten and abused emotionally, spiritually and psychologically even when pregnant. The persons who were/are involved in forced marriage situations and who were interviewed for this study stressed the importance of accurate language to describe their experiences. As we will see in Chapter I, this is particularly the case with respect to how we name the individuals and the offenses perpetrated against them. They also explained that language came secondary in importance to conveying the traumatic emotional and physical, often violent aspects of their exploitation.

This study thus heeds the important call to pay attention to materiality as well as language. I historicize important differences between the contexts in which groups of

⁸¹ Kathleen Canning, *Languages of Labor and Gender: Female Factory Work in Germany, 1850-1914* (Ann Arbor, Mich.: University of Michigan Press, 2002). As Canning and others who focus on materiality stress, women and men must live within constructed categories even as they strive to unmake them.

⁸² As explained above, I use the expression “double jeopardy” to refer to labour and reproductive power. In their critique of racism in the women’s movement, African-American scholars use the expression “double jeopardy” in reference to being both black and female. Morgan, *The Feminist Reader*, 28.

men, women and children experience forced marriage. In the words of Gayatri Spivak, “if you are poor, black and female you get it in three ways.”⁸³ As feminist scholars have argued, I agree that it is impossible to subtract an individual’s racial identity from his/her class and gender, for these identities are experienced in interlocking and interrelated ways. I aim to draw attention to inequalities and to be as self-conscious as possible about not speaking for any of the subjects in this study. Given the struggles faced by those forced to marry, Spivak’s well-known question “can the subaltern speak?” remains an important one; so is the question of whether or not they can be heard in scholarly research, a priority in this study informed by oral history.

While forced marriages, owing to a lack of full and free consent, should not be seen (or linguistically categorised) as legitimate marriages, by virtue of the centrality of marriage in these cases, this dissertation builds on decades of scholarship on marriage. It contributes to the history of marriage in Canada in general, and to the literature on state regulation of marriage, marriage law, and human rights in marriage in particular.⁸⁴

Although the historiography of marriage in Canada often stresses themes that intersect with forced marriage, forced marriage has not been an object of study. I therefore insert forced marriage within this body of work.

⁸³ Cited in Morgan, *The Feminist Reader*, 26.

⁸⁴ On the history of marriage, see Kieran Scott and Michael Warren, eds., *Perspectives on marriage: a reader*, 3rd ed. (New York: Oxford University Press, 2007); Peter W. Ward, *Courtship, love, and marriage in nineteenth-century English Canada* (Montréal: McGill-Queen’s University Press, 1990); Madeline A. Richard, *Ethnic Groups and Marital Choices: Ethnic History and Marital Assimilation in Canada, 1871 and 1971* (Vancouver: University of British Columbia Press, 1991); Deepika Puri, *Gift of a daughter: change and continuity in marriage patterns among two generations of North Indians in Toronto and Delhi* (Dissertation: University of Toronto, 1999); R.B. Outhwaite, ed., *Marriage and Society: Studies in the Social History of Marriage* (London: Europa Publications Limited, 1981); Abbott, *A history of marriage*, 2011; Coontz, *Marriage, a history*, 2005; Nancy F. Cott, *Public vows: a history of marriage and the nation* (Cambridge: Harvard University Press, 2000).

My analysis of Canadian state intervention and regulation of forced marriage – in its uneven, inconsistent, strategic manifestations at different times and in different communities – falls within the broader contexts of changes within society, the family, the economy, and legal and political landscapes. It builds on the rich scholarship on nation-building and marriage in general. Foundational work by Adele Perry, Ann McClintock, Bettina Bradbury, Constance Backhouse, Sarah Carter and others demonstrates the gendered, imperial, national and racial dimensions of the history of marriage, and the centrality of the institution of marriage to empire, nationalism, gender relations and efforts to create and maintain boundaries between races.⁸⁵

Informed by these studies on earlier periods, particularly the work of Adele Perry, Constance Backhouse and Sarah Carter, this study builds upon and applies their approaches to the history of forced marriage in the contemporary period. In the body of this project I identify the imposition of the heterosexual nuclear marriage model, and

⁸⁵ See Bettina Bradbury, *Wife to widow: lives, laws, and politics in nineteenth-century Montreal* (Vancouver, UBC Press, 2011); Bettina Bradbury, “Colonial Comparisons: Rethinking Marriage, Civilization and Nation in Nineteenth-Century White Settler Societies,” in *Rediscovering the British World*, eds., Phillip Buckner & R. Douglas Francis (Calgary; University of Calgary Press, 2005), 135-158; Anne McClintock, *Imperial Leather. Race, Gender and Sexuality in the Colonial Contest* (New York and London: Routledge, 1995); Adele Perry, *On the Edge of Empire: Gender, Race and the Making of British Columbia, 1849-1871* (Toronto: University of Toronto Press, 2001); Sarah Carter, *The Importance of Being Monogamous* (Edmonton: University of Alberta Press, 2008). On the broader links to colonialism and imperialism in Canada and elsewhere more generally, see Sylvia Van Kirk, *Many Tender Ties: Women in Fur-Trade Society, 1670-1870* (Winnipeg, MB: Watson & Dwyer Publishing Ltd., c1980); Karen Anderson, *Chain Her By One Foot: the Subjugation of Native Women in Seventeenth-Century New France* (Routledge, 1991); Bettina Bradbury, “Women at the Hustings: Gender, Citizenship and the Montreal By-Elections of 1832,” in Mona Gleason and Adele Perry, *Rethinking Canada. The Promise of Women’s History*, Fifth Edition, (Don Mills, Ontario: Oxford University Press, 2006), 73-94; Claire Midgley, “Anti-slavery and the roots of imperial feminism,” in Claire Midgley ed., *Gender and Imperialism* (Manchester: Manchester University Press, 1998), 161-179; Antoinette Burton, *Burdens of History: British Feminists, Indian Women, and Imperial Culture, 1865-1915* (Chapel Hill: North Carolina, 1994); Susan Pedersen, “National Bodies, Unspeakable Acts: the Sexual Politics of Colonial Policy-Making,” *Journal of Modern History* 63 (1991): 647-80; Maureen Elgersman, *Unyielding Spirits: Black Women in Slavery in Early Canada and Jamaica* (New York: Garland, 1999).

analyse persistent assumptions by perpetrators of forced marriage that women, men, girls and boys wish to and will inevitably enter monogamous heterosexual relationships. I also trace the connections between marriage and discourses on nation building and Canadian identity. Further, I build on the argument of Catherine Dauvergne and Jenni Millbank that refusal to marry can be seen as “a flashpoint for expressing non-conformity with expected gender roles.”⁸⁶ Lastly, I question why unmarried women have been perceived as out of control⁸⁷, and I look at why many individuals, particularly women, have chosen not to marry in spite of efforts to pressure them to enter what some see as “life’s most significant relationship.”⁸⁸

In addition, this study builds on substantial scholarship on marriage law.⁸⁹ As noted above, this thesis situates forced marriage within socio-legal understandings and debates. Changes to marriage and divorce laws have had a significant impact on the institution of marriage, and the options for those in forced marriages. As fleshed out in

⁸⁶ See Millbank and Dauvergne’s “study of forced marriage refugee decisions in Canada, England and Australia. “Forced Marriage as a Harm,” 2010, 57-88. Also see Millbank and Dauvergne, “Forced Marriage and the Exoticization of Gendered Harms in United States Asylum Law,” *Columbia Journal of Gender and Law*, 2011, 19(3). I consulted the pre-publication version of this article in which the quote above appears on page 2.

⁸⁷ Jean Allman, “Rounding Up Spinster: Unmarried Women and Gender Chaos in Colonial Asante,” *Journal of African History*, 37:2 (1996), 195-214, reprinted in Andrea Cornwall, ed., *Readings in Gender in Africa* (London: International Africa Institute, 2004). While Jean Allman’s assessment of this dynamic is in Asante, it is useful to consider and apply in the Canadian context. As she argues, “This was really about the struggle for control over women’s productive and reproductive labour at the moment they were beginning to negotiate their own spaces” (210).

⁸⁸ Katherine Anderson, Don Browning, and Brian Boyer, eds., *Marriage: just a piece of paper?* (Grand Rapids, Mich.: Eerdmans, 2002); Jo VanEvery, *Heterosexual women changing the family: refusing to be a ‘Wife’!* (Bristol: Taylor & Francis, 1995).

⁸⁹ Helpful legal sources include Katherine Arnup, *Close Personal Relationships between Adults: 100 Years of Marriage in Canada*,” (Law Commission of Canada: 2001); Bruce Ziff, “Recent Developments in Marriage and Divorce” (1986), 18 *Ottawa L. Rev.* 21; Nadine Dostrovsky, Rebecca Cook and Michael Gagnon, *Annotated Bibliography on Comparative and International Law relating to Forced Marriage* (Research Report for Department of Justice Canada, August 2007); and Constance Backhouse, “Pure Patriarchy: Nineteenth-Century Canadian Marriage,” 31 *McGill L. J.* (1985-1986), 264-312.

Chapters III, IV and V, they mark important shifts in Canadian history, including the 1968 “sea of change” and 1986 rise in divorce rates that occurred with the reform of divorce laws and advent of no-fault divorce.⁹⁰ Overall, this study of the legal regulation of marriage without consent provides irrefutable evidence of the longstanding history and persistence of forced marriages in Canada, both prior to legal prohibition, and in the period of international prohibition after 1948. It challenges assumptions about the institution of marriage in Canada, and illuminates the fundamental discord between rhetoric and existing laws vs. reality.

The presence of the law and state regulation through the law is what weaves my study together. At the same time, however, I acknowledge where the nature of an obligation between individuals and broader social expectations go well beyond the law. In most cases, individuals in forced marriages and our wider society do not automatically recognise forced marriages as being any different from marriage in general. Building on important scholarship on legal instruments and legal rights, I analyse what features forced marriages share with “regular” marriages and what features separate them from the latter.

Within legal research that exists on forced marriage, the points of entry or beginning stages of forced marriages have received the most attention by scholars.⁹¹

⁹⁰ Anne-Marie Ambert has used the phrase “sea of change” to describe the period from 1968 following after no-fault divorce legislation was introduced in Canada. On divorce in Canada, consult Aysan Sev’er, *Women and divorce in Canada: a sociological analysis* (Toronto: Canadian Scholars’ Press, 1992); Frank Trovato, *The relationship between migration and the provincial divorce rate in Canada, 1971, and 1978: a reassessment* (Edmonton: Department of Sociology, The University of Alberta, 1985); Anne-Marie Ambert, *Divorce in Canada* (Don Mills: Academic Press Canada, 1979); Anne-Marie Ambert, *Divorce: Facts, Causes and Consequences* (Publisher: Vanier Institute of the Family, Ottawa, 2005); Douglas W. Allen, “No-fault divorce in Canada: Its cause and effect,” *Journal of Economic Behavior & Organization*, Vol. 37 (1998) 129-149.

⁹¹ Particular attention has been paid to how forced marriages are arranged, dowry practices, and on religious promises between parents, families and/or communities in South Asian forced marriage cases.

I believe this is problematic, for it does not take into account the continuum and wide diversity of forced marriage cases. I address this lacuna by inserting and examining cases where individuals are forced to stay in marriages, or are not allowed to exit them. One example on this theme constitutes *Agunah*⁹² (chained wife) cases in the Orthodox Jewish community, where husbands refuse to give their wives a *get* (Jewish divorce).

Lastly, with a focus on forced marriage, I incorporate and critically engage with scholarship on marriage as it relates to human rights law in order to accomplish six things: to outline the substantive limitations of international human rights law; to capture the interplay between the local and the global; to analyze conflicting individual and collective rights in marriage; to contextualize the importance of the humanitarian turn which overlays the context and dialogue in which triumphalist yet paradoxical global and local discussions on forced marriage unfold; to add to the literature on the ways in which individuals shape and produce law; and to underscore the role (and limits) of law in bringing about justice within the institution of marriage over time and space.⁹³

See, for example, S. Gokilavani and S. Gabriel Jelesin, *Marriage, dowry practice and divorce*. New Delhi : Regal Publications, 2008; Jaya Sagade, *Child marriage in India: socio-legal and human rights dimensions* (Delhi; Oxford: Oxford University Press, 2005); Canadian Heritage. Indo-Canadian Women's Association. *International arranged marriages*. Edmonton: Indo Canadian Women's Association, 2005.

⁹² An *agunah* is “a woman ‘chained’ to a husband either unwilling or unable to grant her a Jewish divorce”. (International Council for Agunah Rights: <http://jwa.org/encyclopedia/article/international-coalition-for-agunah-rights-icar#bibliography>) I am indebted to my Aunt, who shared her *Agunah* experience, and to Yael Machtiger, who is currently writing her dissertation on this topic in the Socio-Legal Studies Department at York University. See Pascale Fournier, “*Halacha*, the ‘Jewish State’ and the Canadian *Agunah*: Comparative Law at the Intersection of Religious and Secular Orders,” *Journal of Legal Pluralism*, Vol 65, 2012, 165-204.

⁹³ See C. A. Gearty and Costas Douzinas, Eds., *The Cambridge companion to human rights law* (Cambridge; New York: Cambridge University Press, 2012), particularly Anna Grear, “‘Framing the project’ of international human rights law: reflections on the dysfunctional ‘family’ of the Universal Declaration,” 17-35, Gerd Oberleitner, “Does enforcement matter,” 249-268, and Samuel Moyn “Do human rights treaties make enough of a difference?” 329-347; Mark Goodale and Sally Engle Merry, eds. *The practice of human rights: tracking law between the global and the local* (Cambridge; New York: Cambridge University Press, 2007); Merry, *Human Rights and Gender Violence*, 2006); Lisa M. Kelly,

Finally, this study of forced marriage contributes to the body of scholarship on transnational, global world history. Pioneered in part by historians of slavery⁹⁴, transnational history opens up broader opportunities and comparative possibilities for understanding complex linkages, networks and actors, movements, narratives, flows and circulations.⁹⁵ As Jerry Bentley has argued, “it builds a framework useful for understanding the development of larger global orders and for contextualizing the experiences of particular lands, peoples, and societies.”⁹⁶ The women, men and children examined in this study of forced marriage exchanged ideas and participated in important events, actions and conversations that transcended Canadian boundaries. Indeed, many of their cases of forced marriage played out in dozens of countries and jurisdictions.⁹⁷ They

“Bringing International Human Rights Law Home: An Evaluation of Canada’s Family Law Treatment of Polygamy,” *University of Toronto Faculty Law Review*, Vol. 65 (1), 2007, 1-38; Samuel Moyn, *The Last Utopia: human rights in history* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2010); Bunting, “Stages of Development,” 2005; Annie Bunting and Sally Merry, “Global Regulation and Local Political Struggles: Early Marriage in Northern Nigeria,” in Sudhir Alladi Venkatesh and Ronald Kassimir Eds., *Youth, Globalization, and the Law* (Stanford: Stanford University Press, 2007), 321-353; Rebeca J. Cook, “State Responsibility for Violations of Women’s Human Rights,” *Harvard Human Rights Journal* 7: 125-175; Charlotte Bunch, “Women’s Rights as Human Rights: Toward a Re-Vision of Human Rights,” *Human Rights Quarterly*, 12: 489-498; Canada, Senate Standing Committee on Human Rights, “Who’s in charge here?: effective implementation of Canada’s international obligations with respect to the rights of children: Interim Report” (Ottawa: The Committee, 2005).

⁹⁴ See, for example, the following studies of slave-produced commodities, the transatlantic slave trade, and transnational anti-slavery movements: Philip D. Curtin, “Epidemiology and the Slave Trade,” *Political Science Quarterly*, Vol. 83(1968), 190-216; Philip Curtin, *Cross Cultural Trade in World History* (Cambridge: Cambridge University Press, 1984); Sidney Wilfred Mintz, *Sweetness and Power: The Place of Sugar in Modern History* (New York, NY: Viking, 1985); Seymour Drescher, *Capitalism and Antislavery: British Mobilization in Comparative Perspective* (New York: Oxford University Press, 1987); Miers and Roberts, *The End of Slavery*, 1998); David Brion Davis, *Inhuman Bondage: The Rise and Fall of Slavery in the New World* (Oxford: Oxford University Press, 2006).

⁹⁵ An example of this is the movement against gender violence in the 1990s. C.A. Bayly, Sven Beckert, Matthew Connelly, Isabel Hofmeyr, Wendy Kozol, and Patricia Seed. “AHR Conversation: On Transnational History,” *American Historical Review* 111, no. 5 (2006): 1441-64; Judith P. Zinsser, “Women’s History, World History, and the Construction of New Narratives,” *Journal of Women’s History* 12, no. 3 (2000): 196-206.

⁹⁶ Jerry H. Bentley, “Myths, Wagers and Some Moral Implications of World History,” *Journal of World History* 16, no. 1 (2005): 77.

⁹⁷ See the Canadian and World Maps in Chapter I. Asylum case records highlight the transnational nature of many forced marriages. See, for example, Catherine Dauvergne and Jenni Millbank. “Forced

illustrate the “interconnectedness and interdependence of political and social changes across the world.”⁹⁸ This extends to their simultaneous involvement in policy work and movements against forced marriage that spanned Africa, Asia, Australia, Europe, North and South America.⁹⁹

Accordingly, this dissertation teases out connections, exchanges and interactions that cut across local, provincial and national borders; it thus seeks to highlight particularities and commonalities in cases of forced marriage and the responses to them. At the same time, I historicize important nation-based concerns, and motivations of state actors that played out in unique ways within longstanding, “Canadian”, and newcomer African, European, North American, South American, Middle Eastern and Asian diasporic communities in Canada.

Although existing studies on conjugal relationships and practices described as “forced marriage” have examined common global themes, including but not limited to human rights law, refugee and asylum claims, dimensions of violence, resistance and

Marriage as a Harm in Domestic and International Law,” *Modern Law Review*, Vol. 73, pp. 57-88, 2010. On the international nature of contemporary marriages, see Sharmila Lodhia, “Brides Without Borders: New Topographies of Violence and the Future of Law in an era of Transnational Citizen-Subjects,” *Columbia Journal of Gender Law*, Vol. 19:3, September (2010), 703-745;

⁹⁸ C.A. Bayly, *The Birth of the Modern World 1780-1914: Global Comparisons and Connections* (Oxford: Blackwell, 2004), 1. Studies on mail-order brides illustrate this interconnectedness. See, for example, Louise Langevin and Marie-Claire Belleau, “Trafficking in Women in Canada: A Critical Analysis of The Legal Framework Governing Immigrant Live-in Caregivers and Mail-Order Brides,” *Status of Women Canada*, 2000; Marie-Claire Belleau, “Mail-order Brides in a Global World,” *Albany Law Review*, Vol. 67, 2003, 595-607; Audrey Macklin, “Women as Migrant: Members in National and Global Communities,” *Canadian Woman Studies* (1999) Vol. 19, 3, 24-31; Susan H. Jackson, “Marriages of Convenience: International Marriage Brokers, “Mail-Order Brides,” and Domestic Servitude,” *University of Toledo Law Review*, Vol. 38 (2007), 895-922.

⁹⁹ Here I take inspiration from Elsa Barkley Brown’s “Gumbo ya ya” (everyone talks at once) metaphor. Just like in Jazz music in which various sounds and voices go different ways at once, I seek to understand and embrace the multiplicity of voices intersecting simultaneously. See Elsa Barkley Brown, “‘What has happened here?’ The Politics of Difference in Women’s History and Feminist Politics,” *Feminist Studies*, 18: 2 (1992), repr. in Morgan, *The Feminist History Reader* (Routledge, 2006), 300-308.

activism, they have primarily focused on the African continent, with the exception of considerable work on forced marriage in the United Kingdom, a few studies on European countries, and the United States.¹⁰⁰ Indeed, little analytic attention has been paid to the Canadian context of forced marriage. Most of the literature on marriage in Canada has centred on the family, nation-building, childrearing, gender roles, religion, culture, violence, and spousal abuse. I address these issues by historicizing and bringing into conversation the pluralistic, diverse range of forced marriages in and through Canada, some of which I gain access to through scholarship on courtship and marital breakdown.

As we will see in Chapters III, IV and V, discourse in the media, letters exchanged between government officials, and some scholarship on forced marriage display xenophobic tendencies.¹⁰¹ For instance, in 2012 Heather MacIntosh wrote, “If we were to accept forced marriage because there are considerably greater numbers of people

¹⁰⁰ Much of focus has been on the Special Court for Sierra Leone decision, “bush wives,” early/child marriage, and legal and policy interventions in the United Kingdom, Europe and Africa. See, for example, Annie Bunting, “Stages of Development: Marriage of Girls and Teens as an International Human Rights Issue” (2005) 14(1) *Social and Legal Studies* 17-38; Khristopher Carlson and Dyan Mazurana, “Forced Marriage within the Lord’s Resistance Army, Uganda: Strengthening the humanity and dignity of people in crisis through knowledge and practice,” Feinstein International Center: May 2008; Amy Palmer, “An Evolutionary Analysis of Gender-Based War Crimes and the Continued Tolerance of ‘Forced Marriage’,” *Northwestern Journal of International Human Rights* 7:1 (2009); Augustine S. J. Park, “‘Other Inhumane Acts’: Forced Marriage, Girl Soldiers and the Special Court for Sierra Leone,” *Social Legal Studies* 15 (2006); Micaela Frulli, “Advancing International Criminal Law: The Special Court for Sierra Leone Recognizes Forced Marriage as a ‘New’ Crime against Humanity,” *Journal of International Criminal Justice* 6 (2008); Aisha K. Gill and Sundari Anitha, eds., *Forced marriage: introducing a social justice and human rights perspective* (London: Zed Books, 2011); Emma Ratia and Anne Walter, *International exploration on forced marriages: a study on legal initiatives, policies and public discussions in Belgium, France, Germany, the United Kingdom and Switzerland* (Nijmegen: Wolf Legal Publishers, 2009); Brigitte Clark and Claudina Richards, “The Prevention and Prohibition of Forced Marriages – A Comparative Approach,” *International and Comparative Law Quarterly*, vol. 57, July 2008, 501-528; Clive Heaton, Louise McCallum and Razia Jogi, *Forced marriage: a special bulletin* (Bristol, UK: Family Law, 2009); Cara Goeller, “Forced Marriage and the Granting of Asylum,” *William and Mary Journal of Women and the Law*, Fall 2007, 173-194.

¹⁰¹ See, for example, Raveena Aulakh, “Forced to wed: “They think they’re doing what’s best for the child”: Rescue in Punjab shows disturbing tradition is alive in Canada,” *The Toronto Star*, 14 November, 2009.

in Canada now for whom it is not an unethical practice, Canada would become an ethically worse place. So forced marriage is a form of cultural difference we want to reject and prevent, not accommodate.”¹⁰² While an extensive critical race reading of this trend is not a focus of this project, I am interested and mindful of the work by critical race scholars that has revealed why this line of thinking is problematic, and why racialized communities fear a law and order agenda that is anti-immigrant. Indeed, as Sherene Razack argues, a law and order agenda can lead to more police violence, racism and higher incarceration rates.¹⁰³ For important reasons evident in this thesis, racialized communities in which forced marriages occur desire the space for internal dialogue. However, based on research for this study, it is alarmingly clear that individual community fears of potential racism have also trumped a collective feminist response to forced marriage in Canada. I therefore argue that the fear of discrimination against already racialized communities is very real and significant, but stress this *ought not to* trump feminist and community human rights work to protect and prioritize those most vulnerable to forced marriage: women and girls.

As noted above, to date, existing analysis in Canada has presumed a connection between forced marriages and immigrant, typically Muslim, Arab and African diasporic

¹⁰² Heather MacIntosh in *Gender culture religion: tackling some difficult questions*, edited by Heather MacIntosh and Dan Shapiro (Calgary: Sheldon Chumir Foundation for Ethics in Leadership, 2012), 44.

¹⁰³ Sherene Razack, “Racism in the name of feminism,” in *Casting Out: The Eviction of Muslims From Western Law and Politics* (Toronto: University of Toronto Press, 2008); *Race, Space, and the Law: Unmapping a White Settler Society* (Toronto: Between the Lines, 2002); “Imperilled Muslim Women, Dangerous Muslim Men and Civilised Europeans: Legal and Social Responses to Forced Marriages,” *12 Feminist Legal Studies*, 129 (2004).

communities.¹⁰⁴ In some cases, the focus on these racialized groups has been motivated by Islamophobia and anti-immigration sentiments. Solid research substantiating this overrepresentation in Canada does not yet exist. As such, it is critical that scholars quantify and qualify this phenomenon wherever it exists. In this vein, this study identifies forced marriages across cultures and communities in Canada, affecting men and women of a diversity of ages, ethnicities and sexualities.

I bring to light cases within Aboriginal communities, longstanding mainstream groups in Canada (i.e. Catholics and Mennonites), and less mainstream religious communities, namely the Orthodox Jewish and Mormon communities. A well-known example is that of alleged forced marriage and marriage trafficking of under aged girls of the Fundamentalist Church of Jesus Christ of Latter-day Saints (FLDS) in Bountiful, British Columbia.¹⁰⁵ That said, to be clear, there are higher incidences of forced marriage reported in certain communities, particularly South Asian ones, for important, specific reasons. I acknowledge this and, where possible, I seek to investigate why this is the case. However, this is not a central aim of this project. Smaller, community and cultural specific case studies are beyond the scope of this thesis, but this type of analysis is

¹⁰⁴ Nikki Keddie's work, although not on forced marriage, is instructive on how to contextualize the occurrence of forced marriage among Muslim groups in Canada. As she explains, Muslim women have been used in a political and ideological game. Keddie, "The Past and the Present of Women in the Muslim World," *Journal of World History*, 1 (1990), 86 and 96.

¹⁰⁵ On this sub-group, see Janet Bennion, *Evaluating the effects of polygamy on women and children in four North American Mormon fundamentalist groups: an anthropological study* (Lewiston: Edwin Mellen Press, 2008); Susan G. Drummond, *Polygamy's inscrutable secular mischief*, Comparative Research in Law and Political Economy Network (Toronto: Osgoode Hall Law School, York University, 2009); Jon Krakauer, *Under the Banner of Heaven: A Story of Violent Faith* (New York: Doubleday, 2003); Bramham, *The Secret Lives of Saints*, 2009; Angela Campbell, "Wives' Tales Reflecting on Research in Bountiful," *Canadian Journal of Law and Society*, 2008, Vol. 23 (1-2), 121-141; Angela Campbell, "Bountiful Voices," *Osgoode Hall Law Journal*, Vol. 47 (2), 2009, 183-234; Michelle Chan, "Beyond Bountiful: Toward an Intersectional and Postcolonial Feminist Intervention in the British Columbia Polygamy Reference," *Appeal*, Vol. 16 (2011), 15-30.

certainly needed. My central preoccupation is how we are to understand what unites the many cases of forced marriage in my research. One of my central arguments is that an important transcultural similarity unites the broad range of cases in this study – that, in fact, forced marriages (in, across, through and out of Canada) are always based on control, power, and dominance often accompanied with violence.¹⁰⁶ Like Sally Engle Merry, I see violence as encompassing the physical, psychological, emotional and financial.¹⁰⁷ Control as a rationale for forced marriage is supported by recent articles, reports and qualitative analysis in this dissertation. Recent work also situates forced marriage within scholarship on violence against women. Feminist scholars have called for a reassessment of terminology when it comes to violence and “honour crimes”. I agree with the general consensus for the use of the terms “femicide” or “murder” rather than “honour crime”, and “violence against women” rather than “domestic” or “family” violence when abuse is directed at women.¹⁰⁸ This language better captures the nature of this violence.

Finally, Ayan Sev’er has rightly noted that “the vested intellectual interests of different disciplines overly sensitize theorists to certain assertions and away from others.”¹⁰⁹ The multifaceted, interlinking forces and factors discussed in the literature review above are a testament to the complexities at play in forced marriages situations. I agree that specific explanations for involuntary marriage “differ on the basis of the pulls

¹⁰⁶ I discuss this in greater detail in the chapters that follow.

¹⁰⁷ Sally Engle Merry, ed. *Gender Violence: A Cultural Perspective* (Malden, MA; Oxford: Wiley-Blackwell Pub., 2009), 181-182.

¹⁰⁸ See Gill and Anitha, *Forced Marriage*, 3-4; M. Horvath and L. Kelly, *From the Outset: Why Violence Should Be a Priority for the Commission for Equality and Human Rights* (London: CSWASU).

¹⁰⁹ *Women and Divorce in Canada*, 1982, 103.

and pushes of academic disciplines” and “the theoretical subdivisions within disciplines themselves.”¹¹⁰ This history dissertation seeks to bridge disciplines and approaches where it can to emphasize multiple variables at play in forced marriage situations. Nevertheless, it is a research project grounded in and inspired by the bodies of literature explored above. As such, I acknowledge that I have likely been more sensitive and/or predisposed to some variables and factors over others. For instance, in light of my focus on what cases of forced marriage share in common, I chose not to focus on the role and influence of culture. This is certainly a matter for further study.

Major Arguments and Chapter Outline

The introduction to this project opened with the famous, provocative question posed by Tina Turner’s song: “What’s Love Got To Do With It?” When it comes to free choice and love in marriage, the answer to Tina Turner’s question provided by this dissertation is that free choice and the “old fashioned notion” of love, as she puts it, have a lot less to do with marriages than popular rhetoric, triumphalist thinking, theoretical universal human rights and freedoms would have us believe. As in other countries, leading up to and between 1948 and 2008, the ability, and then right to choose one’s spouse theoretically, legally, socially and rhetorically, became increasingly possible in Canada. Yet, as I argue based on findings throughout this thesis, the existence of this rhetorical freedom remained fundamentally constrained in reality, and the dichotomy between forced and free marriage was not so stark.

¹¹⁰ Ibid.

Chapter I of this dissertation outlines the methods, diverse set of sources, oral history framework, data analysis and findings I used to answer the project's three central research questions. Grounded in my rich source base and oral history methodology, my qualitative and quantitative findings include the overall forms of forced marriage reported during the period of the project, explanations for these forced marriages, and an overview of the individuals and sub-groups affected. These findings lay the groundwork for subsequent chapters that explore many of these forms of forced marriage, explanations, individuals and sub-groups. Significantly, the findings in Chapter I reveal the very clear contradiction between the rhetoric vs. reality of forced marriage in Canada. I encountered this contradiction from the start of this project, during substantive findings in the primary and secondary research stages, through to Qualitative Nvivo Software analysis revelations. As we will see, despite evidence to the contrary, international, national, provincial and local Canadian officials across sectors have tended to focus on forced marriages as merely an issue in the international development arena OR to target three specific domestic groups as exceptional problems through uneven patterns of "othering". These three groups have been Aboriginals (especially through the persistence of xenophobic and racist fur trade tropes and colonial discourses), immigrants (as unassimilated threats to Canada's unproblematic marriage model) and Muslims (as 'uncivilized', 'barbaric' extremists, particularly post-9/11).¹¹¹ Chapter I, like the project as a whole, reveals that forced marriage in Canada cannot be reduced to an international, Aboriginal, immigrant or Muslim 'problem'. As we will see, the history of forced

¹¹¹ The language used in S-7 is the most recent example of this. See Chapter II.

marriage in Canada as a source, transit and destination country between 1948 and 2008 was far more complex.

Chapter II highlights definitional issues and legal precedents of relevance and importance to the entire chronological period under study. It provides conceptual clarity in terms of what forms of forced marriage constitute slavery. In doing so, it stresses the complexities at play when it comes to determining legal consent, the distinctions between servile marriage, slavery and forced marriage, and lays the legal foundation for the rest of the project. I call for the need to put forced marriage on the continuum of constrained consent in the institution of marriage rather than constructing it as the exception to the notion of free and full consent, as often implied in triumphalist discourses of progress of consent to marriage and marriage for love over time and space. Additionally, Chapter II outlines the unequal power relationships that arguably put the whole idea of consent into question as well as the diverse, complex range of forced marriage cases that have come to the attention of the Canadian state that create significant challenges when instituting legal responses to forced marriages. Here, I make clear the substantive limitations of international human rights law, the disconnect between international and domestic Canadian law, the use-value of existing domestic measures, and limitations within domestic law. I also present the advantages and disadvantages of applying a human trafficking lens to cases of forced marriage, outline the contradiction between one's rights in marriage vis-à-vis the law vs. ability in reality to exercise them, and the complex considerations that make any criminal prosecution of the perpetrators of forced marriages (including the provisions recently passed in Canada) a very delicate decision.

Chapters III to V then proceed chronologically, periodized based on key changes, moments and themes I identified involving Canadians and global actors who exchanged ideas, participated in events, actions and conversations involving forced marriage. In Chapter III, I rely on cases of forced marriage to delve beneath the rhetoric of a past filled with “good marriages” in Canada since Confederation. To do so, I start by historicizing the period leading up to 1948, during which general marriage cases and forced marriage cases alike raised fundamental questions surrounding valid consent to marry. Having laid out “the history of the long” (to quote Braudel) of which the post-World II period is a part (while also marked by key events), I tease out continuities in patriarchy through marriage, the silencing of female voices, and challenges to Canada’s ‘marriage fortress’ as seen through cases of forced marriage post-1945 until divorce law reforms in 1967-1968. In particular, I reveal the hypocrisy and ignorance of Department of Justice, Foreign Affairs and Technical Services officials in Ottawa who assumed without any evidentiary basis or investigation (to my knowledge) that “servile marriages” (as defined in the 1956 Supplementary Convention) were merely a “native” issue in communities they deemed in need of “assimilation”. As we will see, these officials made this erroneous assumption during a period marked firstly by a series of cases in non-Aboriginal communities, and secondly by cases of forced marriage between Aboriginal Residential School pupils ironically perpetrated by Indian Affairs and church personnel who received funding from the federal government.

Chapter IV places the 1967-1968 divorce law reforms and resulting changes for persons in forced marriage situations in historical context. I draw upon archival

documents, legal cases, first-hand testimonies and secondary sources to continue putting Canada's history of forced marriage under the microscope. As we will see, this period saw the genesis of feminist work and challenges to forced marriage, revealing fundamental flaws, inequalities and violence in forced marriages and marriages as a whole, leading some Canadians to reject marriage all together, some deeming it to be slavery (in both the rhetorical and literal senses). This period was also marked by challenges to the racialization of forced marriage as an immigrant, brown/black issue through increased attention to cases in other communities, particularly the polygamous FLDS Church in Bountiful. In the 1970s and 1980s, some Canadians, particularly feminists, increasingly spoke out against forced marriage and inequalities in marriage across cultures and sectors. As a whole, they rejected justifications for the practice, increasingly demanded that the Canadian state "have business in the marriages of the nation", and called for reforms that led to the 1985-1986 Divorce Law.

Chapter V traces the continuation of forced marriage cases, their complexities, and efforts to prevent/stop them from 1986 to 2008. Through a case study with the respondent with whom I spent the most time during this project, I illustrate how individuals in forced marriage situations accept, live, negotiate, resist and rebel. Further, based on refugee asylum cases, case law, unreported cases, primary and secondary sources from this period, I call for the need to examine forced marriage as it intersects with social ostracism and murder, and highlight the "othering" of Muslims and immigrants in forced marriage situations in this period. In doing so, I analyze varied forms in which forced marriages manifested from 1986 to 2008, and the uneven

responses to them that reveal problematic biases and stereotypes. I conclude the chapter with a discussion of challenges inherent with underreporting of forced marriage cases, a call for more systematic inclusion of the voices of individuals with lived experience, and a summary of Canada's 2008 conference on forced marriage – a “light bulb moment” that has led to important initiatives and developments.

Finally, the conclusion summarizes my key arguments and findings, the epilogue contains policy recommendations and an update on developments since 2008, and there are 7 appendices: a sample Access to Information Request, a sample questionnaire, my ethics approval and certificate, the informed consent form used for respondents, a table with my data on refugee asylum cases involving alleged forced marriage situations from 1989-2008, the 2008 Call for Papers for the Forced Marriage Symposium in Toronto, and a 2008 article summarizing this important first conference on forced marriage in Canada.

* * *

This dissertation confirms and provides irrefutable evidence of the longstanding history and persistence of forced marriages in Canada. Between 1948 and 2008, profound changes took place in the rhetoric about forced marriage, its regulation by the Canadian state, the ways in which it was contested, and the realities for persons in forced marriage situations. Yet, as I demonstrate, the freedom to choose who/if/when to marry remained fundamentally constrained in reality. By accepting and assuming full and free consent to marriage was possible as outlined in laws and human rights instruments that came to be

throughout this period, Canadians ignored, overlooked and denied the reality that structural dynamics, challenges, constraints and patriarchy have made (and continue to make) full and free consent in marriage for all impossible.

Chapter I: “I have a say!”: Sources, Oral History Methodology, Data Analysis and Findings

In the 2007 film *Arranged*, Rochel Meschenberg, a young Orthodox Jewish woman whose family seeks to find her a husband via a *shadchen* (matchmaker), is confronted by the principal of the public school where she has begun teaching. When her principal tells her that her community customs are outdated and patriarchal, Rochel adamantly voices a crucial difference between attempts to arrange her marriage and forced marriages: “I have a say!”¹

Unlike Rochel, Melanie, a long-time resident of Winnipeg, Manitoba, did not have a say in her marriage. Born to Canadian parents in Paraguay, at the age of eight, Melanie moved to Canada, where she was raised in a tight-knit Mennonite family and community. Melanie was taught from a young age that “marriages were obligatory relationships for life.”² In 1988, at the age of 18, her family and community learned that she was pregnant. Shortly thereafter, Melanie was coerced to marry the father of her unborn baby. Melanie recounts that she was distraught and overwhelmed by threats and duress.³ She did not wish to get married on the day of her wedding, but was coerced to do so “out of a sense of obligation, duty and shame.”⁴ Most of all, she was concerned for her

¹*Arranged* directed by Diane Crespo and Stefan Schaefer (New York, NY: Cicala Filmworks, Film Movement, 2007), DVD.

² Melanie, *Interview by Author. Digital Recording*. (Saint-Boniface Manitoba, May 20, 2012).

³ As noted by Esther L. Lenkinski in *Halsbury’s Laws of Canada*, “Consent given at the time of the ceremony must be a real, understanding, and voluntary consent. To constitute duress, it must be established that there was no valid consent as the applicant’s mind was so overcome by oppression that there was an absence of free choice.” See “Family” volume, First Edition, HFA-12, “Duress” (LexisNexis Inc., 2010), 135.

⁴ Melanie, *Interview by Author. Digital Recording*. (Saint-Boniface Manitoba, May 20, 2012).

future child, not knowing what would happen to her infant if she refused.⁵ Her state of duress destroyed the possibility of full and free consent as defined under the law. After the ceremony, Melanie also lost the limited freedom and choice she had previously had over her life. In addition to being in a forced marriage, her forced husband was abusive on many levels.⁶ He often issued threats of suicide and demonstrated irrational behaviour that made her fear he would become violent and harm her and their young daughter. In order to put food on the table, Melanie worked long hours at multiple jobs. Her forced husband managed all of the money she earned, making her ask – even plead – for funds to make her own purchases.

Today, at the age of forty-four, Melanie is still healing. After a difficult divorce, she went back to school while working full-time and raising her children. Twenty-six years after her forced marriage, she is teaching at a university while finishing her

⁵ While not within the limits and purview of this study, further research is needed on the links between forced marriage, pregnancy out of wedlock and homes for pregnant youth and women in Canada. I intend to pursue this as post-doctoral project. As this study has found and Naïma Bendriss stresses in her 2008 study on forced marriage in Canada, forced marriages have occurred in Canada, particularly prior to 1988 when access to abortions was legalized in Canada, as a way for families “to deal with the consequences of pregnancy out of wedlock” (Bendriss, *Report on the Practice of Forced Marriage in Canada: Interviews with Frontline Workers*, Ottawa: Department of Justice Canada, 2008, 16-17). Bendriss’ summary on pregnancy as a rationale for forced marriage is based on frontline worker testimonies of cases involving the Latin American community in Canada, but she heard additional testimonials about this phenomenon across sectors and communities. For research on this topic and links between pregnancy and forced “shot-gun” weddings, see the following: Andrew L. Cherry and Mary E. Dillon, Eds., *International Handbook of Adolescent Pregnancy: Medical, Psychosocial, and Public Health Responses* (New York: Springer, 2014); Patrick Brode, *Courted and Abandoned: Seduction in Canadian Law*, Osgoode Society for Canadian Legal History (Toronto: University of Toronto Press, 2002); Ann Fessler, *The Girls Who Went Away: The Hidden History of Women Who Surrendered Children for Adoption in the Decades Before Roe v. Wade* (Toronto: Penguin, 2006); Christabelle Sethna, “All Aboard? Canadian Women’s Abortion Tourism, 1960-1980” in *Gender, Health, and Popular Culture: Historical Perspectives*, ed., Cheryl Krasnick Warsh (Waterloo: Wilfrid Laurier University Press, 2011), 89-108.

⁶ Forced marriage is arguably a form of violence mostly against women. In this example, Melanie experienced both violations. On the intersection between forced marriage and domestic violence, see Gill and Anitha, eds., *Forced marriage*, 2011.

Master's Degree. Melanie stresses that “we think of ourselves as being very socially aware and socially conscious about women’s rights but I don’t think we understand abuse, coercion and obligatory marriages very well in this country. . . . It still happens very much and it’s very hush hush. It’s swept under the rug, and it’s just an issue that no one wants to talk about.”⁷ Like Melanie, Canadians of all ages and backgrounds whose forced marriages have been “swept under the rug” are increasingly voicing their concerns. This project includes some of their insights and what they have to say as it interrogates the impacts forced marriages have had on individuals, families and entire communities across Canada and beyond, contributing to our collective history.

Drawing on a diverse set of sources, including oral history testimonies like that of Melanie, this dissertation explores three central multi-part questions about “our story” of forced marriage in Canada. As outlined in the introduction, these questions are as follows: 1) What role has the Canadian state played in regulating consent to marriage in Canada, and in framing laws to combat forced marriages? More specifically, in putting Canada under the microscope with respect to forced marriage and its regulation, how can we explain this practice?; 2) What forms of forced marriage took place between 1948 and 2008? Have forced marriage cases, discourses and practices in certain communities in Canada received more attention than others?; 3) What insights can individual cases and testimonies provide about forced marriage in Canada and the social contexts in which

⁷ Melanie, *Interview by Author*, 2012. Melanie used the term “obligatory marriage” to describe her experience. She stressed that once forced to marry, she was obliged to stay married for life. Based on the duress and coercion she experienced, she did not give her full and free consent. As such, her case meets the definitional threshold of a forced marriage.

policies are framed? More specifically, how have individuals and sub-groups from communities across the country explained the causes of this phenomenon, how have they responded to it, and what do they have to say?

In order to capture the broadest range of voices, relationships and contexts available so that I might explore and answer these questions, I cast my net as widely as possible in terms of primary and secondary sources. Early on, I conducted an extensive literature review, and tracked down sources based on footnotes in books and articles. I then read a lot of material on courtship and marital breakdown. This yielded a number of additional materials, including more books, articles, and topical documentaries. From there, I consulted secondary sources on forced marriage in Europe, including the United Kingdom, France and Australia. I relied on several international treaties and consensus documents, especially the UDHR of 1948, the 1926 and 1956 Slavery Conventions, and the Palermo Protocol of 2000. I then combed through archives, finding a number of particularly useful domestic and international documents at the National Archives in Ottawa, the Archives of Ontario in Toronto, and the Hudson Bay Archives in Manitoba. In addition, I consulted legal sources in the Osgoode Hall Law Library at York University navigating key legal databases and guides, including Quick Law, CanLii, Lexis Nexus, Hansard, and Halsbury's Laws of Canada. Together, these guides and databases led me to dozens of cases, refugee asylum records, and comprehensive overviews of laws related to forced marriage in Canada. These laws intersect at various levels of government and differ per province. While no "forced marriage" offense existed

in Canada at the domestic level until Bill S-7 was passed in June, 2015⁸, there were provisions related to forced marriage that fell under child protection, civil, constitutional, criminal, family violence, human rights, immigration and refugee law.⁹ The search engines and guides I exhausted led me to diverse federal, provincial/territorial and civil cases of forced marriage in Canada from Confederation to the present. Often, I found these cases by doing searches of annulments or divorces on the basis of “duress” or “lack of consent.” I found other cases by going through asylum and refugee appeals.

While helpful, the written sources described above had limitations. Court rulings and case law I located frequently lacked details, or only presented one side of a case or what was of interest to the presiding judge. In other cases, a ruling was made without a clear explanation or sufficient information that would allow me to conduct further research. Also, for the entire period of this study, it proved difficult to know if the cases I found were representative. In some instances, cases were sensational, or seemed to forward particular agendas. In other instances, it appeared that a case may have gone before a court only because one of the parties had the financial means to hire a lawyer. I familiarized myself with literature on legal history source analysis and the role of law in

⁸ Bill S-7, *An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts*, was announced by Canada’s Citizenship and Immigration Minister on November 5, 2014. It was passed on June 15, 2015. Civil changes and changes to the Criminal Code of Canada came into effect on June 18, 2015. Immigration changes took effect in October, 2015. The bill can be read in its entirety at http://www.parl.gc.ca/content/hoc/Bills/412/Government/S-7/S-7_3/S-7_3.PDF

⁹ Relevant statutes in forced marriage cases include s. 15(1) and s. 28 of the Canadian Charter of Rights and Freedoms, and the following in the Criminal Code: ss. 151, 152, 153, 155 and 170-172; ss. 215 and 218; s. 264.1; ss. 265-268; ss. 271-273; s. 273.3; s. 279; s. 279(2); ss. 280-283; s. 292; s. 346; s. 423; and s. 718.2. See Chapter II for additional relevant legislation.

reproducing injustices.¹⁰ I also proceeded with caution when analysing all rulings. As Carolyn Podruchny has suggested, historical analyses must “read beyond the words” and around the overt intentions of those with the power to disseminate information.¹¹ I have sought to look beyond any obvious or potential biases in these written sources, including assumptions about class, gender, sexuality, culture, ethnicity and/or race dynamics.

As I was carrying out my research, a friendly archivist at the Hudson’s Bay Archives in Winnipeg, Manitoba told me that I was venturing into ‘unchartered territory.’ To be sure, as he and others stressed, the controversial, private nature of forced marriages and the reality that those who encourage or coerce individuals into them are often family or community members can be significant obstacles to locating cases of forced marriage. In 2008, while volunteering at the Canadian Centre for Victims of Torture (CCVT) in Toronto, I met a Somali woman who was involved in a forced marriage, named Amina. Within two months, Amina drew my attention to four additional forced marriage cases, some of which had occurred years earlier. Only her case, one of the five, had been reported. The extent of underreporting, both recently and in the past, quickly became apparent.

After researching this topic for the past seven years, I am convinced that many, in fact probably most, forced marriage cases in Canada have not been reported, accessed or consulted by researchers. This is because they exist in rough, written formats in police,

¹⁰ See, for example, Susan Silbey, “After Legal Consciousness,” *Annu. Rev. Law Soc. Sci.* 2005. 1: 323-68.

¹¹ Carolyn Podruchny, *Making the Voyageur World: Travelers and Traders in the North American Fur Trade* (Lincoln: University of Nebraska Press, 2006), 7.

government, legal clinic and front-line responder records from which they have never found their way into formal reports or archival data bases. Where I was allowed access and had the ability to travel on my limited graduate student budget, I went ‘behind the scenes’ and accessed as many cases as possible, most of which were reported via phone calls to first responders, during meetings with lawyers, or during domestic abuse incidents and assault proceedings. I intend to focus solely on these cases in a post-doctoral project. The data that can be found in these records is groundbreaking. So too are the number of cases we can bring to light, as I have sought to do, through carefully combing available archival and case law databases, focusing in particular on marriage breakdown, on divorce and annulment cases where lack of consent is at play. Doing both is critical if we are to write a forced marriage history from the perspectives of persons in forced marriage situations. That said, all of these written records, even those that record the first-hand experiences of persons in forced marriage situations, rarely contain their unmediated feelings and thoughts. Reading and analyzing archival documents, legal cases and front-line case files calls upon the social historian to carefully consider questions of control, agency and power, what these sources tell us about institutional structures and systems, and the individuals whose lives these institutions shape.¹² Whenever it was possible, I paired archival and legal evidence with front-line and survivor-centred sources, including testimonies, memoirs, documentaries and poetry, gathering as many forms of evidence as possible to corroborate and triangulate my findings.

¹² See introduction and other essays in Franca Iacovetta and Wendy Mitchinson, Eds., *On the Case Explorations in Social History* (Toronto: University of Toronto Press, 1998).

From the beginning of this research project, I recognized that an oral history framework would allow me to dig deeper. Going to the pains of conducting and transcribing dozens of interviews made sense, for it provided me with the opportunity to access and critically engage with the perspectives of persons involved in forced marriages, community members, family members, participants, witnesses, NGOs, service providers, law enforcement officials, government officials, and other experts that did not exist in the written records I located. To cover all of these perspectives, I interviewed individuals within each of these sub-groups and spoke to Canadian citizens, permanent residents and refugees. As a result, my study contains a diversity of experiences and the voices of a range of individuals and communities in which forced marriages have manifested in Canada that cannot be gleaned from archival and secondary research alone.

The interviews I began in August 2011 revealed a number of unreported cases, provided me with the chance to examine and/or get summaries of non-for-profit and legal clinic archives, and led me to additional print and digital sources. Having been made aware of unpublished data and investigative reports through individuals I interviewed, in February 2012 I requested documents via Access to Information requests with seven federal government departments: the Royal Canadian Mounted Police, the Immigration and Refugee Board of Canada, Status of Women Canada, Citizenship and Immigration Canada, Library and Archives Canada, Statistics Canada, and the Department of Justice.¹³ The sources I obtained from these departments ranged from reports, demographic data, training modules in response to cases of forced marriage, and policy

¹³ See sample follow-up Access to Information Request in Appendix I.

related concerns. I was also made aware of anecdotal references to human trafficking for the purpose of forced marriage. I therefore contacted front-line service providers with expertise on marriage trafficking cases to get as much data on them as possible. In most cases, this type of data collection was not taking place. Lastly, members of the National Network of Agencies Against Forced Marriage and the South Asian Legal Clinic of Ontario generously shared materials that were not widely circulated.¹⁴

All in all, I conducted thirty-five formal interviews, and met with dozens of individuals off the record.¹⁵ I refer to the individuals I interviewed on the record as “respondents.”¹⁶ I only identify the first and/or last names of those who expressed their desire to be interviewed on the record, or whose views are a matter of public record.¹⁷ I identify all other respondents by first-name pseudonyms, most often of their own choosing, which proved to be an amusing exercise during their interviews. To locate respondents, I used the sociological method known as *purposeful sampling*, which allows the researcher to look for individuals and groups who can offer an answer to theoretical questions.¹⁸ My recruitment of respondents was thus connected to my three research

¹⁴ See <http://www.salc.on.ca> and www.forcedmarriages.ca

¹⁵ The standard number of interviews for oral history dissertations of this kind ranges from approximately 30 to 50. I met with well over 50 individuals, and formally interviewed 35. Given the personal nature of this topic, I respected the wishes of those who shared their experiences, but did not wish for them to go on the record.

¹⁶ In doing so, I am following the model of Rhoda Howard-Hassmann et al in *Reparations to Africa* (Pennsylvania: University of Pennsylvania Press, 2008), 20.

¹⁷ To clarify, I secured the consent of all thirty-five respondents, including the subset who elected to go “on the record.”

¹⁸ Purposeful sampling is the selection of a variety of respondents for specific reasons, including because they have particular in-depth information, expertise and insights on an issue that little is known about, they meet particular criteria of interest, and/or demonstrate variations in their opinions, attitudes and knowledge on a particular theme.

questions. It also partially relied on referrals and the *snowball effect*¹⁹ often used to compile a sample of hard-to-reach respondents. Given my geographic base in Toronto, Ontario and community ties as a native of Winnipeg, Manitoba, I found it most difficult to meet or reach respondents in the three northern territories and the Maritimes. Additionally, for practical and financial reasons, more interviews and research trips were completed in Ontario than elsewhere.

I conducted *semi-structured interviews*²⁰ with the thirty-five respondents that followed a predesigned questionnaire. In spite of the significant time required in order to practice and train myself in this method, I elected to conduct semi-structured interviews because the literature I consulted showed they have a proven advantage: they “guide the questions to be asked, but allow the respondent plenty of leeway to reply as he or she sees fit.”²¹ During my face-to-face interviews, I had the chance to modify the order of questions based on a respondent’s answers, which allowed the interview to flow naturally, and made for more organic answers in relation to a respondent’s knowledge and experiences. I designed sector-specific questionnaires and completed preliminary unofficial, informal interviews with volunteer respondents to test them.²² All interviews

¹⁹ The snowball effect is the process through which interview subjects identify additional people who have rich information, who, in turn, know and refer the researcher to others.

²⁰ By semi-structured interviews, I mean the technique used in face-to-face interviews that allows the respondent (person being interviewed) to express his/her opinions based on open-ended questions that may flow based on his/her responses. The order of questions and exact wording of questions for this qualitative information can differ per respondent.

²¹ Ibid., *Reparations to Africa*, 21.

²² See sample questionnaire in Appendix II.

from August 2011 onwards followed the final versions of these pre-set questionnaires.²³ Respondents were given a detailed consent form explaining the risks and measures in place to prioritize their privacy and safety. Their security and wellbeing were my first priority during interviews. I familiarized myself with trauma literature, spoke to trauma specialists, and was especially sensitive to the needs of individuals I interviewed who were still in potentially dangerous situations. In all cases, I was prepared with phone numbers for expert front-line service providers and resources.²⁴

Acknowledging one's experiences vis-à-vis one's research subject matter is important. Since 2008, I have sat on multiple community committees, and have participated in conferences and public forums on forced marriage in Canada and abroad. I have also been contacted about urgent forced marriage cases, worked in collaboration with front-line service providers, fielded questions from friends of persons in forced marriage situations, and had direct contact with several survivors, particularly with Amina who I first met as a volunteer mentor and now know as a close friend. As Sherna Berger Gluck has concluded, "Although we can console ourselves with the knowledge that there is no such thing as 'objective' reporting, we must recognize our own influence in the interview process".²⁵ I recognize that my perspectives based on first-hand experiences since 2008 may have come through in nonverbal cues or subtle voice

²³ I completed and adhered to York University's Ethics Guidelines for Human Participants. See ethics approval and certificate in Appendix III. Also see Informed Consent Form in Appendix IV.

²⁴ By front-line service providers and resources, I mean materials on forced marriage and individual human rights in marriage, and the contact information for legal clinic staff, social workers, community organizations, nurses and law enforcement.

²⁵ Sherna Berger Gluck discusses this phenomenon in "What's So Special about Women?", in Susan H. Armitage, Patricia Hart and Karen Weathermon, eds. *Women's Oral History: The Frontiers Reader* (Lincoln: University of Nebraska Press, 2002), 7.

inflections during interviews, perhaps impacting what respondents judged as correct or important. In addition, I feel it is important to explain that some respondents trusted me, came forward or agreed to be interviewed because they knew of me through community networks. In certain cases, my gender and ‘cultural likeness’ to a respondent seemed to allow for more openness.²⁶ In other cases, respondents explained that they were comfortable speaking to me because I was an outsider or a neutral party with whom they could share things they could not with an insider of their community.²⁷ Several were motivated by the potential usefulness of this research both in and outside of academia. Indeed, on multiple occasions, respondents urged me to use their answers for a public history or policy purpose. I agreed, and have honoured this request from the beginning, explaining my intention to publish this research in accessible formats and settings.

Armed with insights gleaned from the field of oral history²⁸, before and while meeting with respondents, I considered my role, social background, gender, worldview, experiences and influence as the interviewer. In response to Sherry Thomas’ call to “know your own prejudices,”²⁹ I sought to minimize my biases by taking note of predispositions I had, and then confronting them. Consider three examples. First, in the course of interviews, male victims and accomplished professionals in their respective fields revealed that my preconceived profile of a forced marriage victim as being female,

²⁶ Ibid., 9.

²⁷ Margaret Strobel’s piece captures this dynamic well. See “Doing Oral History as an Outsider” in *Women’s Oral History*, 43-50.

²⁸ In addition to helpful oral history readers and volumes cited in my literature review and in this chapter, I benefited from resources shared by the Canadian Oral History Association based in Winnipeg of which I am a member, and from Concordia University’s Oral History Website. See “Oral History, Concordia University: The Stories People Tell Matter,” <http://storytelling.concordia.ca/oralhistory/>

²⁹ Sherry Thomas, *Women’s Oral History*, 58.

young, heterosexual and economically disadvantaged with limited education was far too narrow in scope. They proved the erroneous nature of these assumptions. Indeed, their experiences demonstrated the much broader range of cases affecting women, men, girls and boys of diverse backgrounds, classes, educations, ages and sexualities.³⁰ Second, the repeated violence and coercion exercised by ‘normal’ family members and parents of victims who defined their actions as ‘loving’ required me to accept the ‘ordinariness’ of the perpetrators of forced marriages.³¹ Lastly, my assumption – based on my own discomfort with sharing private information – that most respondents would gloss over or not disclose difficult personal matters was flawed. In fact, the degree to which respondents allowed me to enter their lives surpassed my expectations and deepened my respect for and appreciation of their openness and courage. Many shared very painful, private memories, including incidences of rape and torture. This intimate, unreported and irreplaceable information could not have been gleaned through other methods, reinforcing my belief in the fundamental need for historians to seek out “oral evidence from ordinary people”.³²

The confidentiality of the ‘ordinary people’ interviewed in my study was of vital importance. I gave each respondent the option to remain anonymous, and to withdraw from the interview at any time, in which case all data generated from the interview would be destroyed. I informed all respondents of their right to not answer a question or to

³⁰ I am particularly grateful to Bruce, Jamila, Sandeep and Melanie in this regard.

³¹ Here, scholarship from genocide and Holocaust studies was helpful, including Christopher Browning’s well-known book *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (New York, 1992).

³² Caunce, *Oral History*, 1994, ix.

change their answers.³³ The interviews generally lasted for one and a half to two hours. I varied the order of questions to keep interviews running smoothly when respondents' answers connected to later questions. Each interview was recorded and transcribed unless the respondent in question did not wish to be recorded. In all cases, I took minimal notes. Before making the decision to record, I considered the advantages and disadvantages of the presence of a recorder. I was concerned by Connor McGrath's finding that when note-taking "there is a danger that the interviewee may equate how frantically you are writing with how valuable his or her remarks are".³⁴ I had noticed this phenomenon in a few of my test interviews. I took copious notes at certain times, and witnessed confusion or disappointment when I stopped or took less notes at other times. Or, alternatively, when I stopped making eye contact with the interviewee to jot down a quick note, the interview dynamic and connection between the respondent and I changed. While some respondents initially seemed nervous about being recorded, their body language generally relaxed after a few minutes and many told me after the interview that they forgot about the recorder all together. Recording the testimonies of those who felt comfortable going on-the-record allowed me to have the freedom to take notes only when I found it absolutely necessary to write down interesting and/or new ideas raised by their answers. Furthermore, recording allowed me to be able to fully concentrate on listening and asking

³³ See informed consent form in Appendix IV.

³⁴ Connor McGrath in Kurkowska-Budzan and Zamorski, *Oral History*, 52-53.

important follow up questions to clarify responses to questions, which oral historians and others have found builds a greater rapport between the interviewer and interviewee.³⁵

Prior to the transcription process, I reflected upon the ethics of transcribing. Given that I used a semi-structured questionnaire to ask respondents set questions for cross-comparison and qualitative analysis, my modus operandi was to do verbatim transcriptions, which were very time consuming. It should be noted that punctuation and emphasis were not changed or altered to make for grammatically correct spelling or sentence structures. I sought to maintain the authenticity and voice of respondents to the best of my ability. Nevertheless, the transcriptions are subjective, based on my interpretation of inflection, emphasis, smiles, laughter, and even pauses for tears. I acknowledge that this has implications. Similarly to W.R. Powers, “I take it for granted that I influence the transcript in many ways”.³⁶ In turn, I did not anticipate how the transcription process would affect me. While transcribing, re-reading, coding and analysing the traumatic, violent, and difficult moments of injustice, I alternatively felt sad, angry and frustrated. On multiple occasions, I had to stop working.

Once the verbatim transcriptions were completed, I proceeded to analyse them using Nvivo 10 qualitative data analysis software. Nvivo, a play on the words “in vivo” (Latin for “within the living”), allows a researcher to import source material and determine commonalities and differences.³⁷ The software can work with audio and video

³⁵ Ibid.

³⁶ W.R. Powers in Kurkowska-Budzan and Krzysztof Zamorski, 53. Also see W.R. Power’s study, *Transcription Techniques for the Spoken Word*, Lanham MD: AltaMira Press, 2005.

³⁷ Nvivo software can work with audio and video sources, dataset sources, spreadsheets, picture and social media sources, and is useful for the unstructured or semi-structured data generated from

sources, dataset sources, spreadsheets, picture and social media sources, and for the unstructured or semi-structured data generated from interviews and focus groups. For my purposes, I used Nvivo to analyse the transcriptions I completed with my respondents, all of which, as noted above, were based on common semi-structured questionnaires, which allowed for cross-comparison.

After completing my interviews, I logged the demographic details disclosed by respondents, and proceeded with Nvivo analysis of the data in the transcriptions. To do this, I conducted what is called deductive thematic analysis, a process of reading and re-reading raw data to identify themes.³⁸ I adopted the definition of a “theme” to be a “pattern in the information that at minimum describes and organizes the possible observations and at maximum interprets aspects of the phenomenon.”³⁹ Consider the following example of a theme I detected related to words used by female survivors in place of the term “husband”. When coding the transcriptions of the sub-group of female survivors of forced marriage I interviewed, I noticed an interesting linguistic pattern. While the pronouns “he,” “him” and “his” were not surprising given how often they are used in place of proper nouns in every-day speech, I found that women and girls who experienced forced marriage consistently avoided proper nouns or the word “husband” when they spoke about the men they were forced to marry. None used the terms “spouse” or “partner”. The most common words used were the following: “he”, “his”, “him”,

interviews and focus groups. See Bengt Edhlund and Allan McDougall, *Nvivo 10 Essentials: Your Guide to the World's Most Powerful Qualitative Software* (LULU PR: 2013).

³⁸ Virginia Braun and Victoria Clarke, “Using thematic analysis in psychology,” *Qualitative Research in Psychology*, 3 (2006), 77-101; Benjamin E. Crabtree and William W. Miller, Eds., *Doing Qualitative Research* (Thousand Oaks, CA: Sage, 1999).

³⁹ Boyatzis, *Transforming Qualitative Information*, 1998, 161.

“somebody”, “that guy”, “that man”, “the guy”, “the man”, “the person” and “this guy”.

When they could have used proper nouns or the term “husband” in their answers to questions, they consistently elected not to. Here is an example of this trend to use other descriptors from Amina’s oral transcript:

Then I got married to **this guy** in Kenya. **He** was almost 50 years old. I never met **his** family and didn’t want to. My father and **the man** talked. My father said that I knew the country and that she will run away if you stay, so you should take her to a country she doesn’t know. That’s how we came to Uganda. ... **He** had refugee papers and **he** wanted to go to the refugee camp. **He** just wanted to leave for a better life – maybe to go to Norway. We asked for papers. Then, after that, we went to the UN for an interview. They asked me “how old are you?” and **the guy** was so scared, **he** told them I was 19 when I was 14. **He** didn’t want to be charged. They asked me if I loved **him**. I said yes because I was so scared. I had nowhere to go and I didn’t know anyone. Maybe **he** would hurt me. I didn’t call it marriage. I call like forcing. I used to tell **him** “This is not marriage.”

This theme revealed a collective avoidance and rejection of the term “husband” as a legitimate descriptor. Even more than this, it illustrated an attempt by individuals in forced marriage situations to create distance and avoidance of the personhood of their alleged “husbands”. Amina, whose words are in the example above explained that the man she was forced to marry could not be her husband, nor she his wife, because she never consented to be his wife or to take him as her husband.⁴⁰ This theme reveals that further linguistic research is needed, and that it is important that scholars reconsider how they describe persons in forced marriage situations, ensuring their descriptors appropriately reflect how the persons in these situations, understand, live and view their experiences.

⁴⁰ Amina, *Interview by Author. Digital Recording*. (Sherbourne and Wellesley, Toronto, November 19, 2011).

This dissertation seeks to avoid inappropriate language that may have the effect of legitimizing a forced husband or forced wife in a marriage that is not based on full and free consent of one or both parties. While the reality is that these individuals are often deemed as ‘legitimate’ spouses under the law (after the marriage without consent of one or both parties has taken place), we must recognize and problematize the terminology.

Nvivo Analysis Findings

Using Nvivo software, I coded all of the transcriptions of my interviews with respondents. I then determined and analysed Nvivo themes in answer to my central research questions. In answer to my second central research question, Table I below reveals the forms in which forced marriages manifested in Canada from 1948 to 2008.

I. Forms of Forced Marriage Reported by Respondents (in percentages)⁴¹

1) Forced marriage by parents, family and/or community	100%
2) Forced marriage by religious leader(s) or due to religious pressure (monogamous or polygamous)	78%
3) Forced marriage for the purpose of immigration / sponsorship	65%
4) Forced marriage during or post-conflict/war zone(s)	49%
5) Human trafficking for the purpose of forced marriage	49%
6) Kidnapped/taken for the purpose of forced marriage	26%
7) Forced marriage by the forced spouse in question	22%
8) Forced marriage resulting from status as a slave	22%
9) Adoption for the purpose of forced marriage	17%
10) Forced marriage in the form of a mail-order bride	13%
11) Forced marriage by government officials for assimilation purposes	9%

All four entries listed under the eleventh form (forced marriage by government officials for assimilation purposes) are cases of Aboriginal women and girls forced into marriages during the Residential School Era. Chapter III provides examples of this form of forced

⁴¹ My thanks to Shirley Gillett who shared variations of some of these categories. Note: these are the themes that appeared the most often, but the terms were not defined for or by the respondents.

marriage. Additionally, as we will see, overlap exists between the forced marriages listed in forms five (human trafficking for the purpose of forced marriage), six (kidnapped/taken for the purpose of forced marriage) and eight (forced marriage resulting from the status as a slave). This is the case because, as explained in greater detail in Chapter II, human trafficking constitutes a form of slavery, and kidnapping is often involved in cases of forced marriage involving human trafficking.

Table two below relates to the first central research question of this study on causality and explanations given for forced marriages in Canada from 1948 to 2008. While the explanations are listed in separate categories for accessibility and clarity purposes, they point to interesting and overlapping causes of forced marriage.

II. Explanations for Forced Marriage (in percentages based on all respondents)

1) Community / family pressure	100%
2) Fear due to coercion / violence / abuse (physical, emotional and/or psychological)	91%
3) Lack of education / enforcement / awareness of marriage laws and individual human rights in marriage	91%
4) Patriarchy / oppression of women and girls / inequality between men and women	91%
5) Power / control	87%
6) Culture / tradition	78%
7) Too young in age (more gullible/vulnerable)	78%
8) Religion	70%
9) Economic status / monetary gain	65%
10) Threat of dishonour / shame	65%
11) Lack of other options / possibility to say “no”	61%
12) Immigration sponsorship	49%
13) Politics	43%
14) Fear of racism / xenophobia for community if come forward	39%
15) Refugee status / asylum	30%
16) Imposition of heteronormative sexuality	22%

As noted in the table above, 100% of respondents cited “community/family pressure” (explanation one) as a cause of forced marriages. Following this, 91% of respondents cited three additional central causes of forced marriages: Fear due to coercion / violence / abuse (explanation two), Lack of education / enforcement / awareness of marriage laws and individual human rights in marriage (explanation three), and Patriarchy / oppression of women and girls / inequality between men and women (explanation four). It should be noted that those who indicated religion (explanation eight) as a cause of forced marriage clarified that *no* religion sanctions forced marriage. Rather, the *misuse* of religion – often by male religious leaders – has proved to be a cause of forced marriage. The majority of respondents who cited economic status or monetary gain (explanation nine) as a cause of forced marriage stressed the societal pressure to marry within one’s class. Only a few cases centred on the exchange of money (i.e. via a dowry) or the selling of an individual in marriage as the sole motivation for the forced marriage in question. Those who cited politics as a cause (explanation thirteen) generally referred to politics in the small “p” sense – that is, politics related to family and community dynamics, not larger political movements or governmental politics. Finally, when it comes to the link between forced marriage and age, respondents emphasized young age (explanation seven) as a risk factor. They consistently reported a link between young age and vulnerability to forced marriage. However, as borne out in the literature, they also stressed that people of any age can be forced into marriages.

While these Nvivo findings are significant, this dissertation does not purport to illuminate all forced marriage experiences, or to be quantitatively representative. Rather,

it is grounded in my analysis of primary and secondary sources, case law, and the testimonies of respondents I was able to interview who experienced or had direct involvement in forced marriage cases between 1948 and 2008. I recognize that respondents may have responded to questions in different ways had the interviews occurred at different times, and that other respondents may have had different answers. I also acknowledge the possibility of exaggerated or dishonest testimonies. Undoubtedly, there are important limits to the usefulness of interviews in reaching broader conclusions about forced marriages in Canada, and globally. Nonetheless, combined with the range of other sources I consulted, these thirty-five first-hand testimonies broaden our understanding of this phenomenon and enrich current scholarship on forced marriage in Canada, which currently consists primarily of anecdotal stories, secondary research, and references to cases outside of Canada.⁴²

Prior to conducting interviews, I anticipated that I would find a lot of diversity in answers to questions by respondents. On a number of occasions I was thus surprised to hear “common statements over and over...in tremendously diverse circumstances”.⁴³ For instance, there was a recurrent emphasis on forced marriage as a manifestation of violence, control, power and dominance. As noted in table two above, 87% of respondents stressed this theme. Indeed, respondents of different ethnicities, genders, classes and locations frequently raised common themes. For example, all respondents cited more education, awareness and publicity as the single most important way in which

⁴² See my overview of the existing scholarship in the introduction.

⁴³ Thomas, “Digging beneath the Surface,” in *Women’s Oral History*, 51-52.

to prevent forced marriages.⁴⁴ Often, my views changed based on the themes respondents raised or the answers they gave that challenged arguments or assumptions in the literature.⁴⁵ Their perspectives, and, when possible, their words, are present and triangulated with other sources throughout.

Interview Demographics

In total, from August 5, 2011 to October 12, 2012, I conducted thirty-five formal interviews. Nine were with self-identified *Survivors*, eleven with self-identified *Community Members / Family Members / Participants / Witnesses*, eleven with self-identified *Front Line Service Providers / NGOs / Lawyers / Law Enforcement / Government Officials*, and four with *Researchers*.⁴⁶ The specific demographic information disclosed per respondent follows in tables six to eight below. 89% of the interviews were with women, and 11% were with men.⁴⁷ This 9:1 female to male ratio is reflective of the percentages of women and men impacted by forced marriage in other

⁴⁴ Respondents stressed the need for formal education and popular education, both as social normative change education, as well as legal literacy. They suggested the creation of mandatory marriage classes, materials differentiating between arranged and forced marriages, and resources that make it clear to all that forced marriage is both a crime and social problem in all cultures.

⁴⁵ In some cases, respondents lent or gave me copies of photographs, newspaper articles, newspaper clips, and videos of interest. I was also influenced by the many individuals I informally interviewed who shared their expertise and offered valuable insights.

⁴⁶ In a few cases where I was unable to travel to meet with respondents in person, interviews were done via skype conference call.

⁴⁷ At the moment, far fewer reported cases in which boys or men have been forced to marry exist. It is perhaps for this reason that so few males were willing to speak to me on the record. It remains to be seen if male victims and service providers are more reluctant to speak about this issue. Approximately 6 per cent of the cases in a recent Canadian survey (detailed below) involved male victims. The United Kingdom Forced Marriage Unit has reported that approximately 15% of the cases they work on involve males. See Mary Welstead, "Forced Marriage: Bifurcated Values in the UK." *Denning Law Journal* 21 (2009), 51.

studies.⁴⁸ It also reflects the overrepresentation of women in not-for-profits, community organizations and legal clinics that assist persons in forced marriage situations.

At the time of the interviews, I estimate that 14% of respondents were less than 25 years old, 34% were between 25 and 35 years old, 29% were between 35 and 45 years old, and 23% were over 45 years of age. Focusing on particular cultures or races was not my objective. I did not have a set definition for ethnicity, and valued how respondents defined and described ethnicities. In their responses to questions about cases of forced marriage they witnessed and the perpetrators and victims involved, respondents referred to dozens of ethnicities, often using nationalities, religious identities or cities of origin. All in all, as can be seen in Table III below, respondents used eighty-four descriptors in their descriptions of forced marriage situations involving Canada. Each of these descriptors were used at least once, and some were used a number of times. Further, fifty sub-descriptors are listed with an asterisk under their relevant main descriptors.⁴⁹ Taken

⁴⁸ See, for example, Aisha K. Gill, and Sundari Anitha (eds.) *Forced marriage: introducing a social justice and human rights perspective* (London: Zed Books, 2011) and Catherine Dauvergne and Jenni Millbank, "Forced Marriage as a Harm in Domestic and International Law," *Modern Law Review*, Vol. 73, pp. 57-88, 2010. I provide more analysis on this skewed ratio and the causes for it later in the dissertation.

⁴⁹ Additional cases were brought to my attention by the Immigration and Refugee Board of Canada through an Access to Information Request. The reports by the IRB included references to alleged forced marriage cases in the following countries and were written in the years in parentheses : Albania (1996), Algeria (1995), Armenia (2004), Bangladesh (1996, 1997, 1998, 2000), Benin (2000), Botswana (2011), Cambodia (2003), Chad (2004), China (1993), Comoros (2004), Côte d'Ivoire (1998, 2000, 2002), Democratic Republic of Congo (1998, 2003, 2004), Djibouti (1999), Egypt (1998), Ethiopia (1996, 1997, 1999, 2001), Gambia (1993 and 1994), Ghana (1998, 1999, 2000, 2004), Guatemala (1993), Guinea (2001, 2002, 2003), India (1993, 1994, 1995, 2000, 2001), Iran (1994 and 1998), Iraq (2001), Israel (1996), Jordan (1994), Kenya (1996, 2001, 2002, 2003, 2004, 2005), Korea (1999), Lebanon (1998 and 1999), Libya (2003, 2004), Malaysia (2001), Mali (1995 and 1997), Malawi (2002), Mauritania (2003), Mexico (2002), Mongolia (1999), Morocco (2001, 2002, 2004), Nepal (1996), Niger (2003, 2004), Nigeria (1997, 1999, 2000, 2001, 2002, 2003, 2008), Pakistan (1998, 2004, 2012), Palestinian Authority (2000), Romania (1999), Senegal (2004), Sierra Leone (2000), Somalia (1995), Sri Lanka (1994), Swaziland (1999, 2000, 2010), Syria (1994, 2004), Tanzania (2003), Thailand (1999), Tunisia (2001), Turkey (2001, 2004),

together, the main and sub-descriptors listed alphabetically in the table below reveal the significant scale and scope of forced marriage cases involving Canada as a source, transit and destination country, answering my third research question on which individuals and sub-groups have been affected by cases of forced marriage.

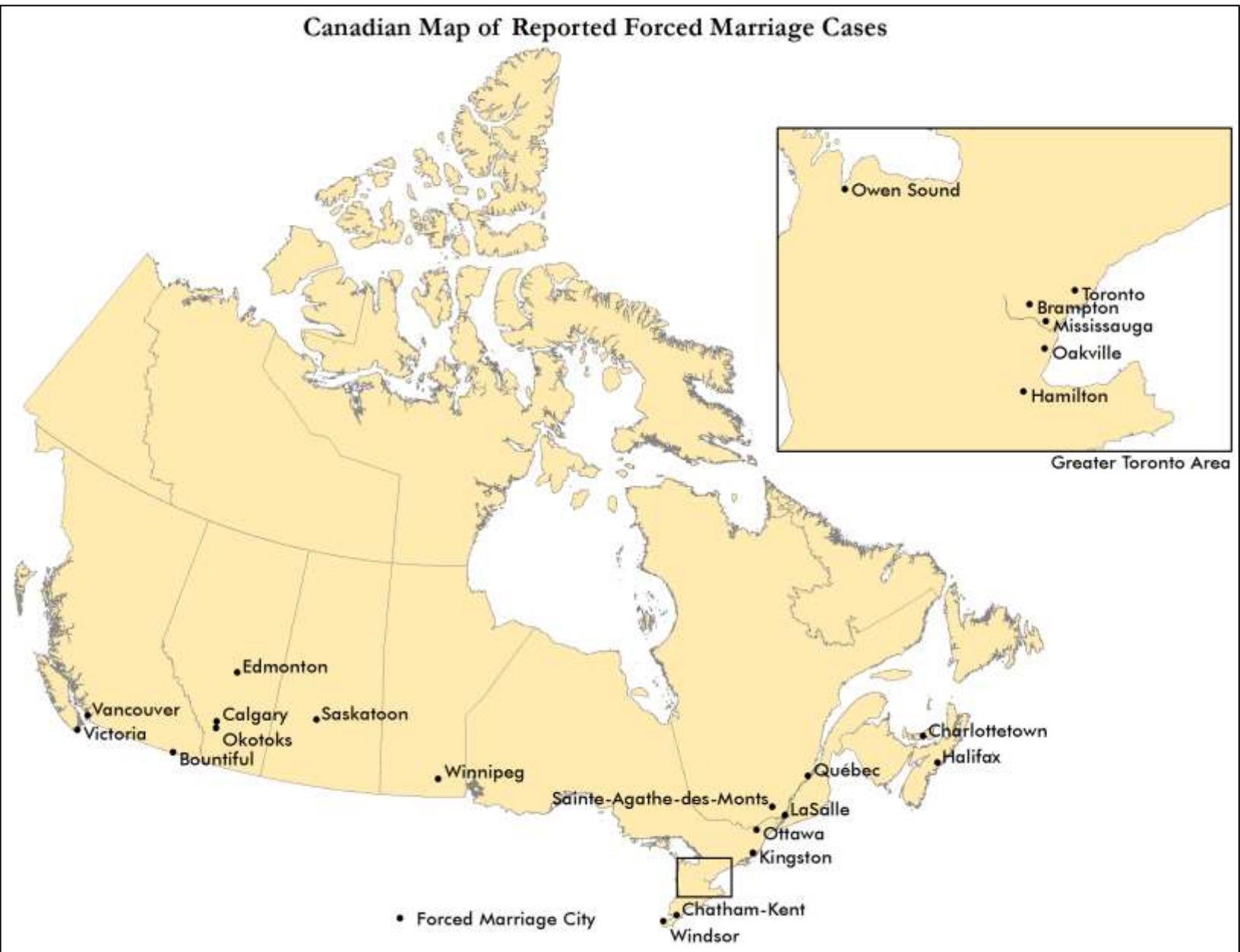
Table III: Ethnic Descriptors Referenced to Describe Forced Marriage Cases In or Involving Canada (in alphabetical order)

Aboriginal	Christian	Jewish		Punjabi
Afghani	Congolese (DRC)	*Ashkenazi	*Sephardic	Roma
*Hazaras	Costa Rican	*Hasidic	*Ultra-Orthodox	Romanian
*Pashtoons	Cuban	*Orthodox		Russian
African	Djiboutian	Kenyan		Rwandan
*North African	Dominican (Dominican Republic)	Latin American		Saudi Arabian
*Sub-Saharan	East-Indian	Maldivians		Senegalese
Algerian	English	Malian		Sikh
American (United States)	Birmingham	Mennonite		Somali
*Arizona	*London	Mexican		*Darod
*New York (city)	*Manchester	Maghrebi		*Marehan
*Brooklyn	Ethiopian	Middle Eastern		South Asian
*Utah	European			*Brahmin (caste)
*Chicago	Filipino	Mormon		Sri Lankan
*Idaho	First Nations	*Bountiful, British Columbia		Sudanese
		*Fundamentalist Church of Jesus Christ of Latter-Day Saints (FLDS Church)		Switzerland (Suisse)
Anglican	Francophone	Moroccan		Turkish
Anglo-Saxon	French	Muslim		Ugandan
Arabic	Guinean	Native		Ukrainian
Asian	Guyanese	Nepalese		West Indian
Bangladeshi	Haitian	Netherlands (Dutch)		Western
Black	Hindu	Nigerian		Western European
British	Hungarian	Norwegian		
Brown	Indian (Aboriginal)	North American		
Burundian				
Cambodian				
Cameroonian				
Canadian				
British Columbia	Manitoba	*Hamilton	*Scarborough	*Ste Agathe-des-Monts
Vancouver	Winnipeg	*Kingston	*Toronto	
Victoria	Saint-Boniface	*Malton	*Windsor	Nova Scotia
Alberta	Ontario	*Mississauga	Quebec	*Halifax
Calgary	Aurora	*North York	*Laurentians	
Edmonton	Brampton	*Oakville	*Montreal	
	*Chatham	*Ottawa	*Quebec	
Caribbean	Indian (Subcontinent)	Pakistani		
Catholic	Iranian	*Sindhi		
Caucasian	Iraqi	Polish		
Central European	Islamic	Protestant		
Chinese	Jamaican	*Brethren		

The ethnic descriptor entries in alphabetical order in the table above serve to demonstrate the scale and scope of forced marriage in communities across Canada. This table is highly relevant and important, for it reveals the diversity of cases brought to light by respondents, and is a starting point for further research. Additionally, in my data collection of refugee asylum cases in the public domain between 1989 and 2008, I identified alleged forced marriage situations involving individuals from 27 countries who resided or had hearings in thirteen Canadian cities.⁵⁰ The maps below visually display the transnational and national nature of forced marriages located and analysed during this project.

⁵⁰ These countries of origin for refugee applicants were (in alphabetical order): Afghanistan, Bangladesh, Benin, Burkina Faso, Cameroon, Central African Republic, China, Chad, Congo (DRC), Djibouti, Egypt, Ghana, Guinea, Iran, Kenya, Lebanon, Liberia, Mali, Pakistan, Nigeria, Syria, Thailand, Turkey, Uganda, Zambia and Zimbabwe. The Canadian cities of residence and of forced marriage case hearings were (in alphabetical order): Brampton, Calgary, Charlottetown, Halifax, Lasalle, Markham, Mississauga, North York, Ottawa, Saskatoon, Toronto, Vancouver and Winnipeg. Thirteen of these countries were not identified by respondents in their descriptors, nor were three Canadian cities. The countries are (in alphabetical order): Benin, Burkina Faso, Central African Republic, Chad, Egypt, Ghana, Iran, Lebanon, Liberia, Syria, Thailand, Zambia and Zimbabwe. The Canadian cities are (in alphabetical order): Charlottetown, Lasalle and Saskatoon.

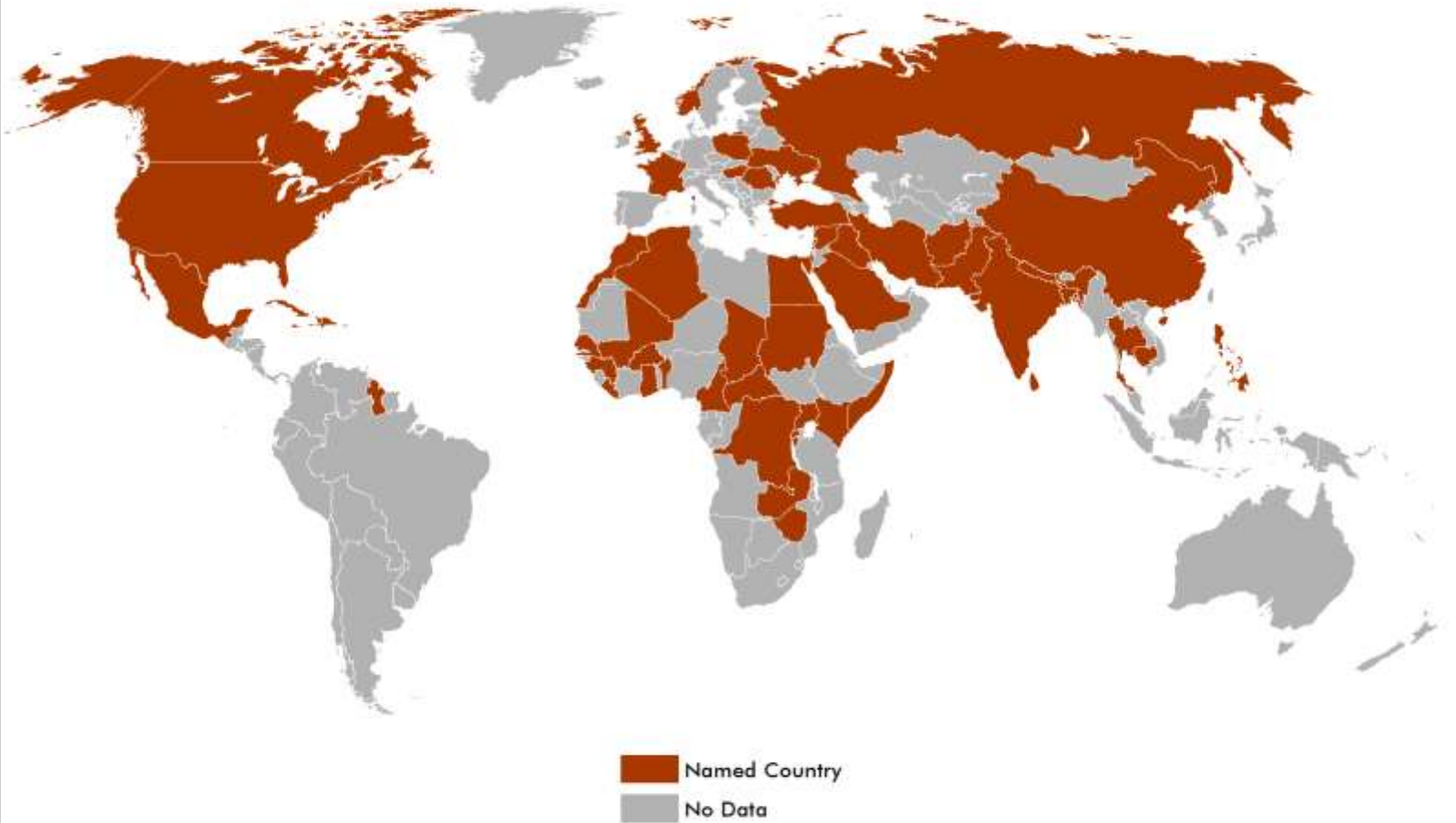
Figure I – © Karlee Sapoznik and Chris Jobson



“Forced marriage city” refers to the city where the marriage took place.

Figure II – © Karlee Sapoznik and Chris Jobson

World Map of Reported Forced Marriage Cases Involving Canada: By Named Country



“Named country” refers to the country named by a respondent.

Respondents were from across Canada and the cases of forced marriage analysed in this thesis involved individuals who resided in Canada as a source, destination or transit country as a result of their forced marriages. At the time of their interviews, 65% of respondents were residing in the province of Ontario, 14% in the prairies, 9% in British Columbia, 9% in Quebec, and 3% in the United States. While I was informed of potential respondents in the Maritimes, contacted about a case in Nova Scotia, and located archival and secondary sources on forced marriage situations in the three northern territories and the Maritimes, I was unable to meet or interview anyone from these regions.

Respondents distinguished between heterosexual forced marriage cases and ones involving individuals of different sexualities. They were aware of cases involving the following declared sexualities: bisexual, gay, heterosexual, homosexual, lesbian, queer, same-sex, straight, and transsexual. Respondents reported cases of polygamy linked to forced marriages in relation to four declared “ethnicities”: Afghani, African, Bangladeshi, and Mormon. This interesting categorization, the link between polygamy and forced marriage, and the question of vulnerability of those with disabilities who are forced into marriages or who lack the mental capacity to consent, are worth exploring further.⁵¹ While I did not specifically ask all respondents if they knew of any cases involving differently abled persons, one respondent referred to a case involving a “dwarf”, another recounted a case of a blind teenager forced to marry at 16 years old, and I found several cases of elderly people tricked and forced into marriages when they did not have the

⁵¹ I hope to investigate these intersections and interconnections in a post-doctoral project.

mental capacity to consent.⁵² It is also worth noting that respondents often distinguished among citizens, refugees, immigrants and permanent residents, emphasizing the increased vulnerability and difficulty in accessing help for persons with tenuous citizenship status.

In addition to sharing their age and ethnicity, respondents were asked to disclose their highest level of education: 9% self-identified as having primary education, 3% had completed high school, 3% college, and 85% had completed one or more university degrees. The high proportion of respondents with university degrees is due to several factors. Firstly, the researchers and front-line service providers all needed to undergo specialized training for their positions. Second, concerned that I may re-traumatize or cause serious harm, I elected not to interview children or individuals who had recently exited their forced marriage situations. Also, many of the individuals I interviewed obtained university degrees after their forced marriages. That said, as has been stated above, forced marriages can happen to anyone of any age. Recent United Kingdom studies have found that educated adult women and men are significantly at risk.⁵³ For instance, at the age of thirty-three, Dr. Humayra Abedin, was tricked and trafficked into a forced marriage in Bangladesh, where she was injected with psychiatric drugs for two months before her release and return to England. Lastly, it is important to note that some of the respondents qualified to come to Canada as immigrants or through spousal sponsorship because they received points for their education. Education is one of six key

⁵² As noted by Esther L. Lenkinski in *Halsbury's Laws of Canada*, "a lack of mental capacity may be said to vitiate consent." See "Family" volume, First Edition, HFA-11, "Capacity to Understand Marriage" (LexisNexis Inc., 2010), 134.

⁵³ See Mary Welstead, "Forced Marriage: Bifurcated Values in the UK," *Denning Law Journal* 21 (2009), 55-56.

factors assessed by Citizenship and Immigration Canada and for which points are allotted to immigrants seeking to immigrate to Canada.⁵⁴

Table IV: Survivors

Name / Pseudonym	Gender	Age	Ethnicity Declared	Level of Education	Date of Interview	Location of Interview
Sandeep	Female	36	East Indian, Hindu	College	November 14, 2011	Victoria, British Columbia
Amina	Female	24	Darod, Somali	Primary	November 19, 2011	Sherbourne and Wellesley, Ontario
Melanie	Female	-	Mennonite	University	May 20, 2012	St. Boniface, Manitoba
Bruce	Male	30	South Asian	University	June 3, 2012	Bloor Street West, Toronto, Ontario
Jamila	Female	41	Afghan	University	June 11, 2012	Scarborough, Ontario
Nazli	Female	46	Pakistani	University	August 20, 2012	Tim Hortons, North York, Ontario

**Three survivors wished to be interviewed without a pseudonym or the publication of their demographic information. I therefore did not include this demographic information in the table above. While I do not quote, cite or formerly analyse their testimonies, their accounts have influenced this project.*

⁵⁴ The other five factors are: English and/or French skills, experience, age, arranged employment in Canada and adaptability. For more on the points system, see Citizenship and Immigration Canada, “Six selection factors – Federal skilled workers” July 1, 2015, <http://www.cic.gc.ca/english/immigrate/skilled/apply-factors.asp>.

Table V: Community Members / Family Members / Participants / Witnesses

Name / Pseudonym	Gender	Age	Ethnicity Declared	Level of Education	Date of Interview	Location of Interview
Navdip	Female	-	Punjabi, Sikh	University	August 5, 2011	Flavell House Law Library, Toronto, Ontario
Drea	Female	31	Mormon	University	September 1, 2011	Prince George, British Columbia
Tracy	Female	51	Irish, Aboriginal	University	September 21, 2011	Bathurst and Sheppard, Toronto, Ontario
Mary	Female	-	Central European, Anglo-Saxon	University	December 1, 2011	York University, North York, Ontario
Salomé	Female	39	Guyanese, West Indian, Hindu	University	December 4, 2011	Pickering, Ontario
Esther	Female	25	White	University	February 15, 2012	North York, Ontario
Sarah	Female	-	Jewish	University	February 16, 2012	Grant and Kenaston, Winnipeg, Manitoba
Adden	Female	24	South Asian	University	October 11, 2012	York University Village, North York, Ontario
Shiblee	Male	24	South Asian, Pakistani	University	October 23, 2012	York University Village, North York, Ontario

**Two additional community members self-identified as Somali, and asked me not to use a pseudonym or share their demographic data. Their testimonies have also influenced this project.*

Table VI: Front Line Service Providers / NGOs / Lawyers

Name / Pseudonym	Gender	Age	Ethnicity Declared	Level of Education	Date of Interview	Location of Interview
Hassanatou	Female	-	Malian	University	January 26, 2011	St. Boniface, Manitoba
Shirley	Female	-	English	University	August 10, 2011	Flavell House Law Library, Toronto, Ontario
Deepa Mattoo	Female	-	South Asian	University	November 15, 2011	South Asian Legal Clinic of Ontario, Toronto, Ontario
Sabita	Female	57	Bengali	University	November 29, 2011	South Asian Women's Centre, Toronto, Ontario
Karen	Female	65	Aboriginal	University	December 1, 2011	Interval House, Ottawa, Ontario
Rita Kohli	Female	58	South Asian, Sikh	University	October 7, 2012	Etobicoke, Ontario

**I interviewed and spoke with one additional front-line service provider as well as two law enforcement personnel and two government officials who work in collaboration with front-line service providers. Unfortunately, these five individuals were not able to get clearance to go "on the record" with a pseudonym or their demographic data.*

Table VII: Researchers

Name / Pseudonym	Gender	Age	Ethnicity Declared	Level of Education	Date of Interview	Location of Interview
Catherine	Female	-	-	University	December 15, 2011	University of British Columbia, Vancouver, British Columbia

Azra	Female	32	Indian	University	November 18, 2011	Concordia University, Montréal, Quebec
Shoshannah	Female	-	Jewish	University	December 5, 2011	San Diego State University, California, United States
Naima	Female	-	Moroccan	University	December 15, 2011	Université du Québec à Montréal, Montréal, Québec

“One is too many”: Quantifying Forced Marriage

For those committed to human rights for all (in spite of the very real limits in their application), one forced marriage experienced by one survivor like Nazli (whose words are featured at the start of this thesis) is too many. Her forced marriage is one of millions.⁵⁵ In 2003, the International Centre for Research on Women (ICRW) estimated that more than 51 million girls under the legal age of consent were currently married, and that this figure would rise to over 100 million by 2013.⁵⁶ Further, according to the ICRW, “if present trends continue, 142 million girls will marry over the next decade. That’s 38,000 girls married every day for the next 10 years.”⁵⁷ A figure for the estimated total number of boys who are married before they can legally consent does not exist. Similarly, data on the number of adult men and women in forced marriage situations does not yet

⁵⁵ Globally speaking, UNICEF estimates that every year 14 million girls are married before they reach 18 years of age. Girls not Brides, <http://www.girlsnotbrides.org/> (May 25, 2013) The critique I apply to forced marriage estimates on page 75 also applies to this section.

⁵⁶ Equality Now, <http://www.equalitynow.org/node/868> (May 28, 2013). The incidence of forced marriage tends to be higher where early marriage is practiced. See Edwige Rude-Antoine, “Forced marriages in Council of Europe member states. A comparative study of legislation and political initiatives,” Council of Europe, 2005.

⁵⁷ International Centre for Research on Women, <http://www.icrw.org/child-marriage-facts-and-figures> (May 28, 2013)

exist.⁵⁸ It is hard enough to determine an accurate incidence of forced marriage among individuals who are deemed “children” or not of legal age to consent. Adding to the challenge, for decades, many forced marriages in Canada have escaped any system of data collection, which means they are not categorised by Statistics Canada or other governmental bodies. For instance, respondents in this study reported a number of forced marriages solemnized through religious ceremonies, but not through civil ones. Further, forced marriages go unseen in statistics on annulments, and “are often hidden within crime statistics where they will be reported as incidences of domestic violence, rape, assault or murder.”⁵⁹ What’s more, this thesis provides a working definition of forced marriage⁶⁰, but a large number of service providers and governmental bodies have never had a working definition of forced marriage, making it difficult to recognize forced marriage situations, and even more challenging to assist victims who have limited opportunities to reach out for help. Confusion has reigned when it comes to the difference between arranged and forced marriages, and many cases have not been detected because they have been mistaken as arranged marriages.⁶¹

“How e guh look”, “Wha dem a guh tink?”, “Wha people guh sah?”⁶²:

⁵⁸ In 2007, UNICEF estimated that over 60 million women currently aged 20-24 were married at 18 years of age or younger. See UNICEF, http://www.unicef.org/media/media_45451.html (May 25, 2013)

⁵⁹ Mary Welstead, “Forced Marriage: Bifurcated Values in the UK.” *Denning Law Journal* 21 (2009), 52.

⁶⁰ My working definition for forced marriage in this thesis (as explained in the introduction) is “any marriage which occurs without the full and free consent of one or both individuals”.

⁶¹ I delineate between arranged and forced marriages, explain important grey zones, and offer a full exploration of the definitional issues in Chapter II.

⁶² This quote is in Guyanese creole. The English translation is: “How will it look? What will they think? What will people say?” Salomé, *Interview by Author. Digital Recording*. (Pickering, Ontario, December 4, 2011).

The Underreporting of Forced Marriages and Respondent Estimates

As mentioned above, while volunteering at the Canadian Centre for Victims of Torture in Toronto, I learned of the extent of underreporting of forced marriages, both recently and in the past. Meanwhile, since 1948, the start date of this study, government bodies, including Citizenship and Immigration Canada, the Interdepartmental Committee concerning the *1956 Supplementary Convention on the Abolition of Slavery and other Practices*, and, more recently, Public Safety Canada, have not gathered data but steadily been faced with important questions like *how many cases, how many victims, and where do they come from?* For over sixty years, officials have erroneously interpreted the low number of reported cases in or involving Canada to correlate to a low prevalence of forced marriage.⁶³

Making matters worse, a number of factors, including familial ties, shame and community pressures, have dissuaded individuals who have experienced forced marriages from coming forward. These factors and cases reveal how we cannot draw a bright line between arranged and forced marriages, for people may say ‘yes’ under pressure even when they want to say ‘no’. Growing up in Pickering, Ontario, Salomé witnessed forced marriages under the guise of arranged marriages within her Guyanese-Hindu family. Often, her loved ones, including cousins, aunts and uncles, felt trapped and acquiesced to marriages to which they did not fully consent or report to authorities because of the social pressure and the fear they experienced connected to the potential consequences of saying

⁶³ See, for example, the correspondence between government officials in Chapter III.

“no” captured in these questions: “How e guh look”, “Wha dem a guh tink?”, “Wha people guh sah?”⁶⁴

For instance, when Salomé’s aunt was in her twenties, her family and community believed “she had to get married.”⁶⁵ As she explains, “the person she had to get married to, his family lived in Guyana, and he lived in Guyana. ... he was unattractive, a couple of times twice her size. She saw pictures of him and she was crying and she kept saying “no, no, no, I don’t want to marry him.”⁶⁶ In spite of her aunt’s desire not to marry this man, “there was no way she would say no, because you just don’t say no.”⁶⁷ As Salomé explains, “If she did, what would her options have been? Where would she go? What would she do? Where would she live? She would be disowned by the family completely.”⁶⁸ None of the forced marriages in Salomé’s family, including that of her aunt, other aunts, uncles and a cousin, were reported to authorities or front-line service providers in Canada. Like Salomé, survivors, organizations, community members and experts in the field are aware of many forced marriages cases. Indeed, they estimate that the total number of cases involving Canada in the period from 1948 to 2008 is in the tens of thousands, the vast majority of which simply do not exist in the public record.⁶⁹ While many of the respondents in this study shared examples and commented on confirmed and

⁶⁴ Salomé, *Interview by Author. Digital Recording*. (Pickering, Ontario, December 4, 2011)

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ By “they”, I refer to NAAFAM, SALCO and other key experts and respondents. As noted earlier, as a post-doctoral project, I hope to examine police, legal clinic and front-line responder records of forced marriage cases which have not been reported, accessed or consulted because they have never found their way into formal reports or archival data bases.

suspected cases of forced marriage they had witnessed or were aware of since 1948, I only formally asked the six respondents who represented the “Front Line Service Providers / NGOs / Lawyers” category for an approximate number. Together, they reported overseeing, being made aware of, or witnessing approximately four thousand cases. Clearly, making an accurate quantitative assessment of forced marriage cases and case patterns/trends has proved (and continues to prove) very difficult without a clear working definition, functioning reporting system, nor a means to more fully address why many cases never get reported.

“It’s the Numbers Game”: Recognizing Forced Marriage as a problem in Canada

For decades, Canada has lagged behind other countries when it comes to addressing the practice of forced marriage. Canada has yet to build the infrastructure to assist those in forced marriage situations and recognize this longstanding domestic human rights issue. As SALCO lawyer Deepa Mattoo explains,

it’s the numbers game. The basic reason why nothing is happening in Canada so far is we don’t have as many cases reported as such. But, if you look at the numbers in England, when they started with the forced marriage unit, they didn’t have large numbers either. Their numbers were really low. Ever since they started with the unit and the outreach their numbers have gone up.⁷⁰

Case law research reveals that cases have often been hidden because the non-consensual features of these marriages have been subsumed under or within cases of violence against women within family law, murder under criminal law, torture under asylum law, or fraud

⁷⁰ Deepa Mattoo, *Interview by Author. Digital Recording*. (South Asian Legal Clinic of Ontario, Toronto, Ontario, August 11, 2010).

within immigration law.⁷¹ This categorisation is problematic, for these sub-categories do not capture the complete picture or essence of what has transpired. Indeed, as SALCO and NAAFM have found, in some forced marriage cases, violence has occurred in order to coerce individuals into marriages, and is used to keep them in these situations. At this point in time, a causal link between forced marriage and violence against women in Canada has not been documented. With further research, I suspect it may be.

In October 2011, I sat on the advisory committee seeking to launch the first data collection initiative on forced marriages in Canada. The survey borne out of this research project sought to: gain a better understanding of the incidence of forced marriage; evaluate the needs of individuals dealing with forced marriage situations; and assess the existing gaps in resources that hinder service providers' abilities to assist clients. In January 2012, the *Forced/Non-Consensual Marriage Survey* was formally launched by the Forced Marriage Project led by SALCO and NAAFM. It gathered information on cases of forced marriage that had occurred in Ontario between January 2010 and January 2012. A total of 219 cases of individuals facing forced marriage situations were reported.⁷² Among other data collected, the survey included findings based on the gender, age, length of time spent in Canada, and status of individuals in forced marriage

⁷¹ Examples include *Thompson v. Thompson* (1971), 4 R.F.L. 376 (Sask. Q.B.); *Parihar v. Bhatti* (1980), 17 R.F.L. (2d) 289; *Asser v. Peermohamed* (1984), 40 R.F.L. (2d) 299 (Ont. H.C.); *S.(A.) v. S.(A.)* (1988), 15 R.F.L. (3d) 443 (Ont. U.F.C.).

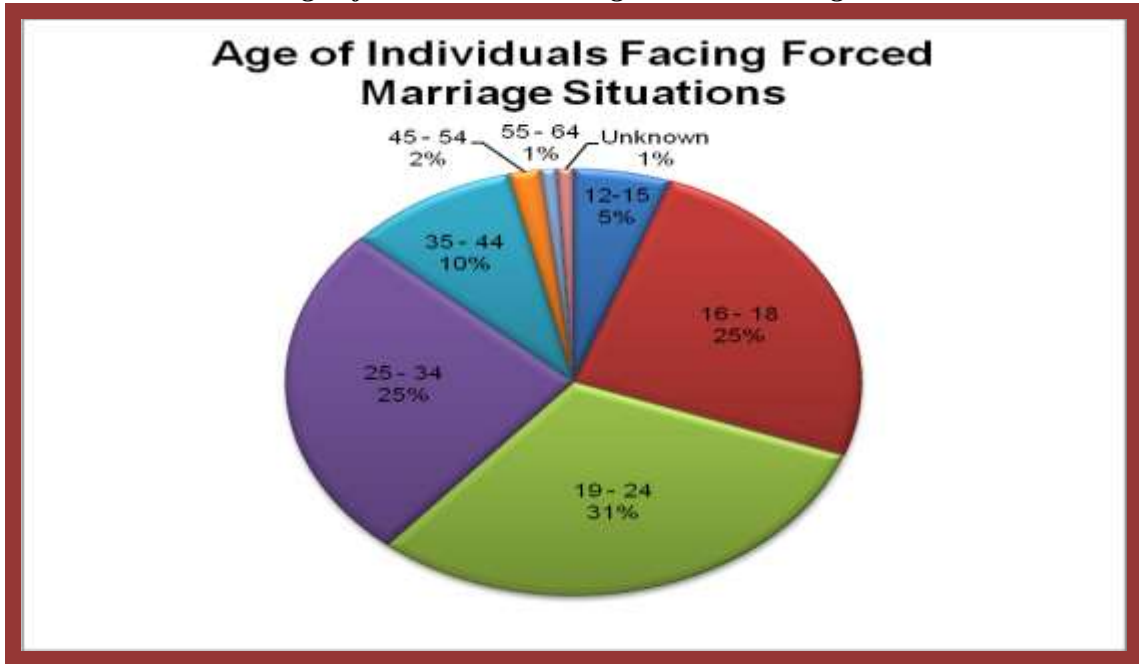
⁷² See Maryum Anis, Shlini Konanur and Deepa Mattoo, Eds., "The Incidence of Forced Marriage in Ontario," (South Asian Legal Clinic of Ontario, 2013): 56p. Accessible at: <http://www.salco.on.ca/SALCO%20-%20Who,%20If,%20When%20to%20Marry%20-%20The%20Incidence%20of%20Forced%20Marriage%20in%20Ontario%20%28Sep%202013%29.pdf>

situations. 202 (92%) of the individuals facing forced marriage situations were female; 13 (6%) male, and 4 (2%) transgender, another gender or did not disclose a gender⁷³

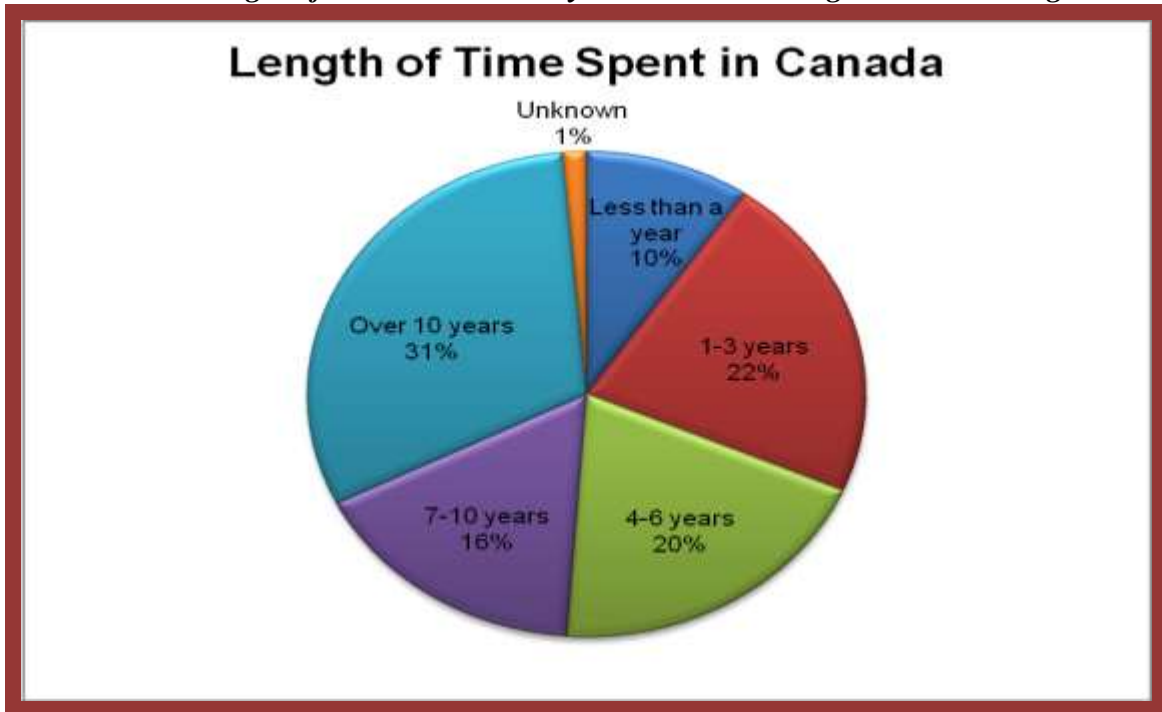
Additionally, as can be seen in the tables below, it is significant that 30% of individuals facing forced marriage situations were persons under 18 years of age. Five per cent were between the ages of 12-15, and 25% between the ages of 16-18. Also significant, as Table X below indicates, the overwhelming majority – 85% – of individuals facing forced marriages were citizens or permanent residents, challenging the misconception that forced marriage is solely an immigrant, refugee and non-status issue involving newcomers to Canada. This finding challenged the myths and, arguably racist stereotypes about who experiences forced marriage, convincingly revealing that we must not assume or take for granted who has been at risk or in a forced marriage situation in Canada. That said, while the largest number of reported cases involved citizens, not surprisingly, the ability to successfully access help decreased as the status of individuals in forced marriage situations became less secure, being increasingly difficult from refugees, to temporary/precarious status holders, to persons with no status.

⁷³ South Asian Legal Clinic of Ontario, Presentation, “Forced/Non-Consensual Marriage in Canada,” February 23, 2013, 11.

*Table VIII: Age of Individuals Facing Forced Marriage Situations*⁷⁴



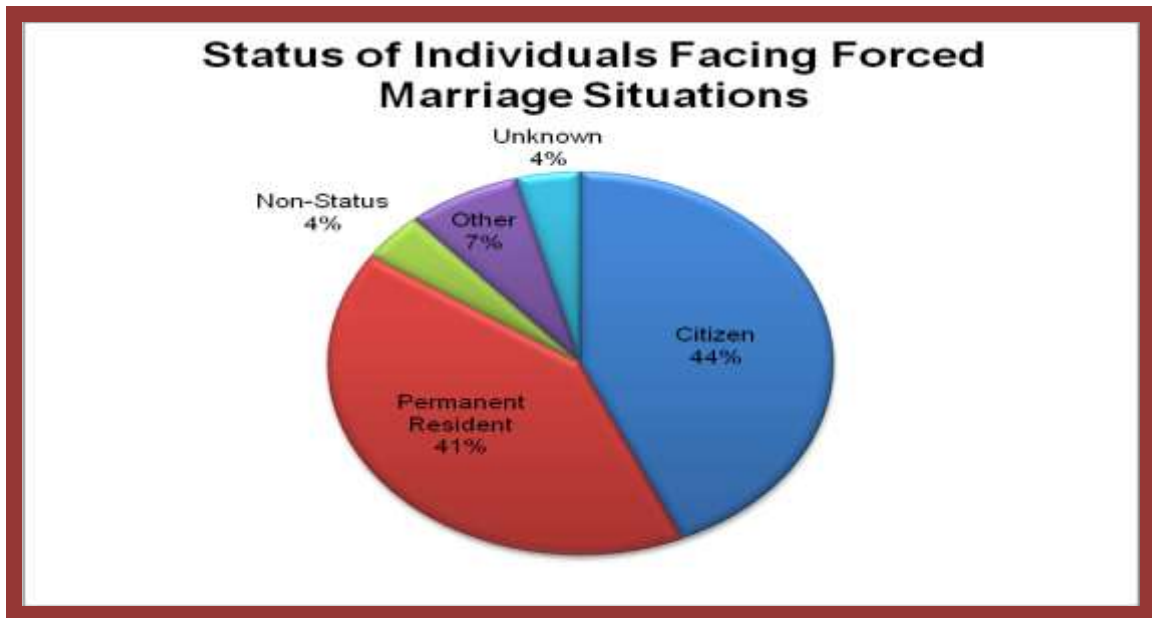
*Table IX: Length of Time in Canada by Individuals Facing Forced Marriage*⁷⁵



⁷⁴ Ibid., 12.

⁷⁵ Ibid., 13.

*Table X: Status of Individuals Facing Forced Marriage Situations*⁷⁶



The findings in SALCO's survey were timely, helpful and important. They confirmed the existence of forced marriages in Ontario; they drew the attention of the Canadian government; and they helped lay the basis for further research.⁷⁷ Also, the publication of the survey findings raised awareness about forced marriages in Canada, encouraging more scholarly analysis and comparative research. For instance, while the survey is provincial, it would be worth analysing it alongside findings in other countries. A similar survey conducted in the United States found 3,000 known and suspected cases

⁷⁶ Ibid., 14.

⁷⁷ When the report was released, it garnered significant media attention across Canada. Here is one example: Debra Black, "Forced marriages a hidden problem in Canada," *The Star*, September 20, 2013, available at http://www.thestar.com/news/investigations/2013/09/20/forced_marriages_a_hidden_problem_in_canada.html

between April 2009 and April 2011.⁷⁸ And, in the United Kingdom a study estimated that the national prevalence of reported forced marriage or the threat of forced marriage was between 5,000 to 8,000 cases.⁷⁹

Overall, Canada's first forced marriage survey was an important step. It raised interesting questions, and highlighted gaps that this study seeks to fill, at least in part. In the chapters that follow I provide historical context on the issue of forced marriage in Canada, and greater conceptual clarity and precision on the nature of this practice in Canada from 1948 to 2008. In addition, my study provides qualitative analysis of first-hand testimonies, something that was not possible for SALCO and NAAF. Here, the contention of sociologist Ken Plummer is worth consideration:

one pivotal perspective which should always be entertained is that of the participant's experience itself. This is not to say that social scientists should always rest content with such perspective; it is to assert that if they fail to seriously consider people's concrete experience and have 'intimate familiarity' with them then they will run the extreme risks of simply being wrong – of speculation and abstracting⁸⁰

Narratives like that of Salomé are of great assistance in detecting important vulnerability factors, understanding the diversity of forced marriage situations, and the layered

⁷⁸ See Heather Heiman and Jeanne Smoot, *Forced Marriage in Immigrant Communities in the United States: 2011 National Survey Results*, Research Report, Tahirih Justice Centre: Protecting Immigrant Women and Girls Fleeing Violence, 2011, 11p (May 28 2013), available at <http://www.tahirih.org/site/wp-content/uploads/2011/09/REPORT-Tahirih-Survey-on-Forced-Marriage-in-Immigrant-Communities-in-the-United-States-September-2011.pdf>

⁷⁹ This is an estimate rather than a reported number because the researchers based their study on the aggregate maximum and minimum number of cases based on their data. See Anne Kazimirski, Peter Keogh, Vijay Kumari, Ruth Smith, Sally Gowland, Susan Purdon with Nazia Khanum, *Forced Marriage – Prevalence and Services Response*, Research Report No. DSCF-RR 128, National Centre for Social Research, 2009, 65p. (May 28 2013), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/189646/DSCF-RR128.pdf.pdf

⁸⁰ Ken Plummer, *Documents of Life: An Introduction to the Problems and Literature of a Humanistic Method* (London: George Allen & Unwin, 1983), 65.

complexities, particularities and commonalities in experience. This important human element cannot be captured when focus is placed solely on quantifying forced marriage. As Joseph Chiari has observed, “Whether in the field of psychology, sociology, linguistics or history, the human element cannot quite be reduced to a scientific norm; there is always a residuum of uniqueness which does not fit the abstractions and generalisations in which the scientist would like to enclose it.”⁸¹ Perhaps what is most difficult to “enclose” in Canada’s first forced marriage survey is how forced marriage was defined and interpreted by those who filled it out. Although SALCO and NAAFM share an excellent, clear definition of forced marriage (which I support and agree with) in their literature and website, they forgot to provide this definition on the final survey forms, raising the question of how the term may have been interpreted by those who reported the 219 cases. It is therefore possible that interpretations of forced marriage varied, perhaps not meeting SALCO/NAAFM’s definition and rendering the quantitative analysis based on survey results less sound. It is critical that we be aware of the limitations of quantitative methods in measuring forms of gender violence like forced marriage. As Sally Engle Merry stresses, there can be problems when we “rely on practices of measurement and counting that are themselves opaque”, and “the interpretations lurk behind the numbers but are rarely presented explicitly.”⁸² Finally, because the survey was carried out by SALCO and a large number of South Asian service

⁸¹ Joseph Chiari in *Ibid.*, 169.

⁸² Sally Engle Merry, “Measuring the World: Indicators, Human Rights, and Global Governance,” *Current Anthropology* 52 (Supp. 3) (2011): S84. On the effectiveness and reliability of indicators and numerical measures that are themselves unclear but presented as objective, and their impact on policy decisions, see Kevin Davis, Angelina Fisher, Benedict Kingsbury, and Sally Engle Merry, *Governance by Indicators: Global Power through Quantification and Rankings* (Oxford: Oxford University Press, 2012).

providers and community groups participated, it is possible that it led to an over-representation of South Asians in its findings which may have further entrenched the yet to be proven assumption that the incidence of forced marriage in Canada is higher in the South Asian community. This dissertation, with its pan-Canadian focus, provides a broader overview of how forced marriages have affected people's lives, identifying the root causes that underscore why they have occurred and the lessons we can learn about how they may be prevented.

This chapter has laid out the diversity of sources, oral history methodology and data analysis and findings I have used to research and analyse forced marriages in Canada between 1948 and 2008. The rich data in my assortment of primary and secondary written sources, combined with insights gleaned from oral interviews with respondents and survivors who "have a say," are analysed and triangulated to corroborate my findings throughout the rest of the dissertation.

Chapter II: Forced Marriage and the Law

“In a well-ordered State, the principal laws will be those governing marriage” – Plato

Born and raised in Birmingham, England, Sandeep was the youngest of six children. When Sandeep was fifteen, her mother fled their family and Sikh community. Shortly thereafter, she learned of a 26-year-old man in Victoria, Canada, with whom her father was in contact. During their first conversation about him as a potential husband, Sandeep told her father that she did not want to go to Canada, and refused the match. However, although she said “no,” the courtship process began. Every Tuesday at 6:30am for the next eight months Sandeep’s father supervised phone conversations between her and the man who soon became her fiancé. Her father would stand next to her, making sure she spoke proper English, watching her ‘Ps’ and ‘Qs’, and that she “did not say anything that would mess things up.”¹

In August of 1993, Sandeep’s father accompanied his teenage daughter to British Columbia, Canada. He agreed to a marriage proposal on her behalf before she had the opportunity to meet or speak to the man she was told was her fiancé in person, let alone consent. The day after her arrival in Canada, she was married. Sandeep did not outright verbally refuse, nor did she physically flee during the marriage ceremony, but she cried throughout. With every fiber of her being she did not want to marry her betrothed, but she had been taught that “the bride has no say.”² In her words, “Falling in love was non-

¹ Sandeep, *Interview by Author. Digital Recording*. (Victoria, British Columbia, November 14 2011).

² Ibid.

negotiable, was not an option, you didn't even explore it, you didn't even dream about it.”³ The emotional duress she was under made her feel that she had to go through with the marriage.

Sandeep's experience illustrates the complexities at play when it comes to determining legal consent. Within Sandeep's context, unequal power relationships arguably put the whole idea of consent into question. As rape crisis centre Executive Director Rita Kohli has concluded, “When we live in a society that is based on an unequal context, when you are groomed from the time when you are born that you will be given away, the conditions are set for forced marriage.”⁴ In addition to revealing the significant complexities relating to consent, Sandeep's case highlights the challenge of determining when, or at what point, a case goes beyond the threshold of traditional arranged marriage⁵, becoming a forced, involuntary marriage. As this case demonstrates, it is therefore no wonder that there have been significant difficulties instituting legal responses to forced marriages.

Through additional case studies, examples and data, this chapter draws attention to the deeply complex factors at play surrounding the law and understandings of the law in relation to forced marriages. It has five central aims. The first aim is to outline the diverse, complex range of forced marriage cases that have come to the attention of the Canadian state from 1945 to 2008. They fall under international, federal, provincial and

³ Ibid.

⁴ Rita Kohli, *Interview by Author. Digital Recording*. (Etobicoke, Ontario, October 7 2012).

⁵ In an arranged marriage, parents, family members and the community are involved, but the ultimate decision on whether (or not) to marry is made by the individuals getting married. They each have full and free consent.

territorial jurisdictions, involving civil, family, criminal, child protection, administrative, human rights, immigration and refugee asylum law. I unpack the umbrella term “forced marriage” and delimit between forced and servile marriages. In doing so, I summarize the administration of marriage under Canadian law and put domestic provisions into the context of Canada’s international obligations. The second section of this chapter outlines the substantive limitations of international human rights law, which relies on the positive, moral obligation of states to address forced marriage within their jurisdictions. In doing so, it argues in favour of practical tools based on a sound understanding of domestic legal responses. In order to this, I rely on case-law, archival records, and the arguments and lessons shared by front-line service providers, survivors, lawyers, community members and researchers. This evidentiary basis points to the ‘disconnect’ between international and domestic law. It stresses the greater use-value of existing, practical measures that fall under family, civil, child protection, criminal and human rights laws. It also outlines the significant challenges and limitations within domestic law. The third aim of this chapter is to present the advantages and disadvantages of applying a human trafficking lens, making use of the (Palermo) *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (2000) to prevent and assist persons in forced marriage situations. Fourth, this chapter recognizes the complex considerations, which make any criminal prosecution of the perpetrators of forced marriages a very delicate decision. Lastly, as I will demonstrate, Sandeep’s experience relating to the limitations of human rights and laws prohibiting forced marriage are emblematic of other forced marriage cases in Canada.

A Multiplicity of Situations: Arranged, Forced and Servile Marriages

“Forced marriage” has become an umbrella term. It covers a plethora of cases in which the basic human rights and freedoms of women and girls (and to a lesser extent men and boys) are violated, and in which exploitation, coercion and consent are at issue. These cases include the sale of women for reasons of dowry, certain forms of arranged marriage, traditional or ‘native’ marriage, marriage for reasons of custom, expediency or perceived respectability, child marriage, pre-marriage, early marriage, polygamous marriage, marriage to acquire nationality, mail-order-brides, marriage as slavery (servile marriage), including forms of debt bondage, forced labour and trafficking in marriage.⁶ Among these cases, there is considerable scope for overlap and a marked difficulty of defining precisely what is meant by an “arranged marriage” vs. a “forced marriage” as well as if/when a marriage constitutes “trafficking” or “slavery”.⁷ Well known Orthodox Jewish author Naomi Ragen stresses that young adolescents in her community are “convinced, not coerced” to marry.⁸ Like the important nuances in Sandeep’s case, this distinction made by Ragen speaks to how complex this phenomenon can be both linguistically and conceptually.

In addressing the diverse range of cases of “forced marriage” in Canada since 1948, researchers and front-line service providers have uncovered a number of legal barriers. These include a lack of protocols at the institutional level, jurisdictional issues at

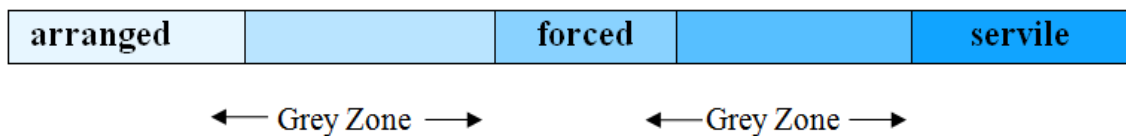
⁶ I reference the rich historical literature on these forms of marriage in the introduction.

⁷ Edwige Rude-Antoine, “Forced marriages in Council of Europe member states. A comparative study of legislation and political initiatives,” Council of Europe, 2005, 7.

⁸ Naomi Ragen, *Interview by Author. E-mail Response*. (November 10 2011).

the federal, provincial and territorial levels, lack of trust between communities and authorities, lack of knowledge and legal training around the issue, cultural stereotyping, racism, and complexities related to the immigration and refugee process.⁹ Perhaps most problematically, as can be seen in the table below, in many cases there is a grey zone, where an arranged marriage (in the period between marriage promise, wedding, and married life) takes on the constitutive elements of a forced or servile marriage, or vice versa, where a forced or servile marriage, along the same continuum, later best embodies what constitutes an arranged marriage.¹⁰

Table XII - Arranged vs. Forced vs. Servile Marriage Continuum



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Consent – both inner and declared – or the lack thereof, are huge quandaries when attempting to delimit cases along the two ends of this continuum between which lie varying degrees of control, pressure, persuasion, expectation, agency, threat and force. The fluid cases of individuals who initially feel they chose to marry freely (perhaps in spite of outside pressure), but later feel they were forced into a non-consensual marriage,

⁹ South Asian Legal Clinic of Ontario, “Forced/Non-Consensual Marriages: A Tool Kit for Service Providers,” June 2010, p. 9.

¹⁰ This continuum diagram was inspired by the South Asian Legal Clinic of Ontario’s diagram distinguishing between arranged and forced marriage. See “Forced marriages / non-consensual marriages,” OCASI Professional Development Conference, November 6 2007, p. 8. Note: It does not capture the complexities of consent as analysed and fleshed out in this thesis. Further, the category of “love” marriage or freedom to choose if/when/who to marry should be added to the left hand side.

or vice versa, of individuals who agree to what may be perceived as a “forced marriage” to flee their home country in the hope of a better life, further compound the confusion.

This confusion concerning degrees of consent and the various manifestations of involuntary marriage is currently reflected in international and domestic law, where “forced marriage” is an umbrella term, lacking precision. Consider a few examples which illustrate the lack of a clear distinction between, for instance, forced and servile marriages. First, in 2005, the British Foreign and Commonwealth Office released a report stating that “The UN recognizes forced marriage as a form of contemporary slavery.”¹¹ Like many of its kind, this report does not indicate or clarify what is meant by a “forced marriage” as opposed to the constitutive legal elements of servile marriages (to be explained below). Second, in a report produced by the United Nations Voluntary Fund on Contemporary Forms of Slavery, readers are informed in a graph of the thematic distribution of funding that 4% has been allotted to “forced marriage.”¹² The same report states that “various forms of slavery exist within the context of marriage, such as forced marriage, the sale or inheritance of wives, and a more recently defined sexual exploitation involving media advertisements of women available for marriage, the so-called mail-order brides.”¹³ This report categorizes “forced early marriage” as one of the “contemporary forms of slavery,” and alludes to “lesser-known types of contemporary slavery,” namely the “Devadasi religious practices that violate children’s human rights,

¹¹ United Kingdom Foreign and Commonwealth Office, *Forced Marriage: A Wrong Not a Right*, September 2005, pp. 13, <http://www.fco.gov.uk/Files/KFile/forcedmarriageconsultation%20doc.pdf>

¹² The United Nations Voluntary Trust Fund on Contemporary Forms of Slavery, pp. 4 and 11, <http://www.ohchr.org/Documents/Publications/UNVFSPublicationsen.pdf>

¹³ *Ibid.*, pp. 11 and 15.

particularly those of Dalit children, forcing them into ‘sexual slavery’ and child marriages.”¹⁴ Adding to this confusion is a third example. In February 2008, the Appeals Chamber of the Special Court for Sierra Leone found that “forced marriage” constituted a “crime against humanity” distinct from that of “sexual slavery.”¹⁵ As Annie Bunting has noted, “While the international legal standards are clear that the constituent elements under the rubric of forced marriage – such as torture, rape, sexual slavery and forced impregnation – are crimes against humanity, it is not clear whether the totality of crimes amounts to slavery, sexual slavery or some other inhumane act.”¹⁶ These examples and on-going developments reveal the confusion surrounding “forced marriage” in relation to “servile marriage” in international law.

Research on the 1926 *Slavery Convention* and the 1956 *Supplementary Convention on the Abolition of Slavery, and the Slave Trade, and Institutions and Practices Similar to Slavery* provides some conceptual clarity with respect to splitting servile and forced marriages under international law. As Jean Allain explains, “While forced marriage is generally considered as a marriage where full and free consent has not been forthcoming, servile marriage is narrower in scope, as it deals with three specific

¹⁴ Ibid., pp. 11.

¹⁵ See Prosecutor v. Taylor, Case No. SCSL-03-01-T, Trial Chamber II, Sentencing Judgement, 40. On the decision, also see Valerie Oosterveld, “Gender and the Charles Taylor Case at the Special Court for Sierra Leone,” *William & Mary Journal of Women and the Law*, Volume 19, Issue 1 (2012): 7-33.

¹⁶ See Annie Bunting, “Forced Marriage’ in Conflict Situations: Researching and Prosecuting Old Harms and New Crimes” *Canadian Journal of Human Rights* 1:1 (2012), 169. Also see Special Court for Sierra Leone, Appeals Chamber, Brima, Kamara and Kanu, Case No. SLSL-2004-16-A, (22 February 2008); and Valerie Oosterveld, “The Special Court for Sierra Leone’s Consideration of Gender-based Violence: Contributing to Transitional Justice?” *Human Rights Review* 10 (2009).

instances where a woman is commodified in marriage.”¹⁷ Article I of the 1956

Supplementary Convention prohibits

(c) any institution or practice whereby: (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or (iii) A woman on the death of her husband is liable to be inherited by another person; (d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.¹⁸

Based on League of Nations (LON) archival research, and on recent cases, namely *The Queen v. Tang* Australian High Court ruling (2008) and the *Hadijatou Mani Koraou v. Niger* case (2008), I agree with Allain that that the 1926 *Slavery Convention* from which “the powers attaching to the right of ownership” definition of slavery originates and has since been repeatedly readopted, is to be read as to include both situations of legal ownership as well as *de facto* slavery.¹⁹ Further, the three instances of servile marriage established as servitudes in the 1956 *Supplementary Convention*, wherein a girl or

¹⁷ Jean Allain, “Servile Marriage as Slavery and its Relevance to Contemporary International Law,” Unpublished Paper, 1.

¹⁸ Under international law, there are no servile marriage provisions for men/boys. This is a gap I address in the policy recommendations at the end of the thesis. United Nations Economic & Social Council [ECOSOC], Conference of Plenipotentiaries on a Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, *Final Act and Supplementary Convention*, art. 1, U.N. Doc. E/CONF.24/23 (Sept. 7, 1956).

¹⁹ See Jean Allain “On the Curious Disappearance of Human Servitude from General International Law,” *Journal of the History of International Law* (2009) 11, pp. 303-332; “The Definition of Slavery in International Law,” *Howard Law Journal*, Vol. 52, No. 2 (2009), pp. 239-275; “Gallagher’s Response to Hathaway’s *The Human Rights Quagmire of ‘Human Trafficking,’*” *Opinio Juris* Blog Archive, June 6, 2009; “Servile Marriage as Slavery and its Relevance to Contemporary International Law,” Unpublished Paper, 24 pages; and “*Hadijatou Mani Koraou v. Republic of Niger*,” *American Journal of International Law*, Vol. 103, 2009, pp. 311-317.

woman is either purchased, transferred, or inherited under the pretext of marriage, “are, in law – in all circumstances – ‘slavery’ as defined by the 1926 Slavery Convention.”²⁰

In all three of these situations, powers are exercised which would normally be attached to a *de jure* or *de facto* right of ownership. In addition, Allain rightly contends that cases of servile marriage are to be considered, in substance, as the crime against humanity of “enslavement” under the jurisdiction of the International Criminal Court.²¹ This means that states are *theoretically* liable under international human rights law and that individuals, including ministers and heads of government who fail to address servile cases of forced marriage, are liable under criminal law.

In 1948, Canadian officials signed the *Universal Declaration of Human Rights* (UDHR), the first international consensus document recognizing (under Article 16:2) that “Marriage shall be entered into only with the free and full consent of the intending parties.”²² Since the post-World War II era, Canada has signed, acceded and ratified numerous treaties under which it is internationally bound to ensure that only marriages which are founded upon mutual consent are recognized within its jurisdictions. Canada ratified the *1956 Supplementary Convention* on 10 January 1963, acceded to the *1966*

²⁰ Allain, “Servile Marriage as Slavery and its Relevance to Contemporary International Law,” 1. See the 2008 finding against the Republic of Niger in the case of *Hadijatou Mani Koraou v. La Republic de Niger*, ECOWAS Court of Justice, Arrêt No. ECW/CCJ/JUD/06/08, 27 October 2008. Also see Jean Allain, “Hadijatou Mani Koraou v. Republic of Niger,” pp. 311-317.

²¹ *Ibid.*, 2.

²² See UN GAOR, 3d Sess. at art. 16.1 and 16.2, U.N. Doc. A/RES/217A(111) (1948). Article 16.1 of the UDHR states that men and women “of full age” have the right to marry and are entitled to equal rights. The UDHR of 1948 also proclaimed the right to human security, which is violated in involuntary marriage cases. In many cases of forced marriage, individuals have looked outside of the artificial “security” of the family to escape abuse. It is important to also note that it was not until 1947 – one year before landmark UDHR international consensus document – that married women in Canada gained control of their nationality status through the *Canadian Citizenship Act*.

International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights on 19 May 1976, ratified the *1979 Convention on the Elimination of All Forms of Discrimination against Women* on 9 January 1982, acceded to the *1989 Convention on the Rights of the Child* on 12 January 1992, and ratified the *2000 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* on 14 September 2005. While international consensus documents like the UDHR are not internationally binding, they too act as additional, powerful tools in applying diplomatic and moral pressure to governments that violate their articles prohibiting forced and/or servile marriage. For instance, the *Universal Islamic Declaration of Human Rights* (1981) adopted by the Islamic Council and proclaimed at UNESCO, the *United Nations Report of the Fourth World Conference on Women* (1995), and Council of Europe texts, viz. the *Traffic in women and forced prostitution in Council of Europe member states* (1997) and *Forced marriages and child marriages* (2005) documents, also recognize the right to free and full consent in a marriage. Only two documents connected to the issue remain unratified by Canada: the *1962 Convention on Consent to Marriage* and the *1978 Hague Convention on Celebration and Recognition of the Validity of Marriages*.²³ With the exception of these two conventions, non-consensual marriages have been forbidden in dozens of international conventions Canada has ratified, and specific forms of forced marriage have

²³ These have not been signed due to federal (marriage and divorce) and provincial (solemnization of marriage) jurisdiction complexities. Given the plethora of other conventions Canada has ratified, the fact that Canada has not signed these two specific ones, does not seem to have limited the ability of individuals or organizations to address forced marriage situations.

been recognized in these conventions as “human trafficking” and/or “slavery.”²⁴ As a party to international treaties and consensus documents dealing with forced marriage, Canada has an obligation under international human rights law to address these issues. In spite of these obligations, Canada has not formally addressed this longstanding social justice issue, nor has the country called for a national multi-jurisdictional research study to determine the history and occurrence of forced marriages, or developed an action plan to prevent them.²⁵ That said, the issue of forced marriage is now on the radar of government departments, officials and funders in Canada. For instance, although funding was recently cut, Status of Women Canada funded the Forced Marriage Project (FMP) led by long-time expert on forced marriage, Shriley Gillet. The project was based out of Agincourt Community Services, where she worked, and led to the creation of a comprehensive website seeking to create awareness and foster education on forced marriage in Canada. The FMP’s website is still online. It states that “Hundreds, possibly thousands, of women, girls, men and boys in Canada are affected by forced marriage;

²⁴ These conventions, treaties and consensus documents include the *Supplementary Convention on the Abolition of Slavery, and the Slave Trade, and Institutions and Practices Similar to Slavery* (1956), the *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages* (1962), the *International Covenant on Civil and Political Rights* (1966), the *International Covenant on Economic, Social and Cultural Rights* (1966), the *Hague Convention on Celebration and Recognition of the Validity of Marriages* (1978), the *Convention on the Elimination of All Forms of Discrimination against Women* (1979), *Universal Islamic Declaration of Human Rights* (1981) adopted by the Islamic Council and proclaimed at UNESCO, the *Convention on the Rights of the Child* (1989), the *United Nations Report of the Fourth World Conference on Women* (1995), and Council of Europe texts, viz. the *Traffic in women and forced prostitution in Council of Europe member states* (1997) and *Forced marriages and child marriages* (2005), the Palermo Protocol (2000), and the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* (2000).

²⁵ See Canada, Senate Standing Committee on Human Rights. “Who’s in charge here?: effective implementation of Canada’s international obligations with respect to the rights of children: Interim Report of the Standing Senate Committee on Human Rights.” Ottawa: The Committee, 2005. Also see Dostrovsky, Cook and Gagnon, “Annotated Bibliography,” 2007.

however it is an issue that has not as yet been adequately addressed in Canada.”²⁶ In collaboration with SALCO and the National Network of Agencies Against Forced Marriage, the FMP has sought to “approach the issue of forced marriage from an anti-oppressive, anti-racist position, viewing it primarily as a form of violence against women, which is sometimes used to control men and boys as well”.²⁷ In addition, the Ontario Trillium Foundation has been a long term funder of SALCO. This legal clinic has used Trillium funding to take on the issue of forced marriage, and Status of Women Canada recently issued a call for applications for projects addressing forced marriage with a focus on family violence.²⁸ Further, in the wake of SALCO’s survey findings discussed in Chapter I, Foreign Affairs Minister John Baird delivered a speech denouncing child marriage abroad and asserted his commitment to discuss solutions to end forced marriage in Canada.²⁹ Yet, there is *no* Canadian protocol of procedures for cases of forced marriage conforming to international treaties dating as far back as 1948. Indeed, because they are not known and/or ineffective, the international legal conventions, consensus documents and treaties Canada has been a party to since 1948 have not been useful to Sandeep and other survivors of forced marriage in Canada.

²⁶ Quoted from the Forced Marriage Project website, July 10 2015: <http://www.fmp-acsa.ca/about-us/>

²⁷ Ibid.

²⁸ The deadline for this call for applications was April, 2015. It’s not clear if any forced marriage related projects were funded.

²⁹ Descriptions of the Status of Women and Department of Justice grants, and copies of John Baird’s speech and comments are accessible online via the following urls: <http://www.swc-cfc.gc.ca/trans/account-resp/pd-dp/dgc-dsc/2009-2010/gc-sc-433-eng.html>; <http://www.justice.gc.ca/eng/fund-fina/cj-jp/fund-fond/fvfm1-vfml1.html>; http://www.thestar.com/news/canada/2013/09/26/john_baird_to_bring_un_campaign_against_forced_marriage_home.html; <http://www.international.gc.ca/media/aff/speeches-discours/2013/09/25a.aspx?lang=eng>

Confusion also abounds domestically, where legal avenues to pursue in forced marriage cases are far from clear. Justice Minister Rob Nicholson's press secretary, Julie Di Mambro has stated that the Canadian *Criminal Code* already has "several provisions that may be used to address forced marriages."³⁰ However, prior to June 2015, Canada lacked a *specific* offense of "forcing someone to marry," and the "provisions that may be used" alluded to by Di Mambro are confusing. Legal provisions and the legal system at the domestic level are unclear and problematic due to several factors.³¹ Consider a few of them. Firstly, challenges exist given divisions of power in overseeing marriages between different levels of government. For instance, the solemnization of marriage and prosecution of Criminal Code offenses fall under the jurisdiction of provincial governments in Canada, but the responsibility for marriage and divorce falls under federal law.³²

³⁰ See Cristin Schmitz, "Forced Marriage: Is it a Crime? A legal issue dealt with abroad now emerges in Canada," *The Lawyers Weekly*, August 31 2012. Accessed October 1, 2012 at <http://www.lawyersweekly.ca/index.php?section=article&volume=32&number=16&article=1>

³¹ While in the defense preparation stage for this project, *Bill S-7* was introduced. It passed in June and October 2015, meaning forced marriage is now criminalized in the Criminal Code and Canada has joined Norway, Belgium and Pakistan in criminalizing forced marriage. Since *Bill S-7* was introduced in November 2014, I have been contacted by several media outlets about whether forced marriages take place in Canada, and my thoughts on the proposed bill. In interviews with them, I have stressed that we need to be careful to avoid stereotypes that this is only an immigrant/brown/Muslim issue. I have explained that in my research on forced marriage in Canada, I have been made aware of longstanding cases in many Canadian communities that challenge these stereotypes, including Catholics, Mennonites, Bountiful and Lev Tahor, forced marriage cases of residential school pupils, and others involving marriage trafficking from Asia and Eastern Europe. I mentioned the need for dialogue and discussion in the coming weeks and months, and that it is critical that the government consult and work with front-line service providers and individuals with experiential knowledge.

³² See H.R. Hahlo, *Nullity of Marriage in Canada* (Toronto: Butterworths, 1979), 5. Also see [1912] A.C. 880, at p. 887 (P.C.); *Peppiatt v. Peppiatt* (1915), 30 D.L.R. 1 (Ont. C.A.); *Neilson et al. v. Underwood*, [1934] 4 D.L.R. 167 (S.C.C.); *Kerr v. Kerr*, [1934] S.C.R. 72; *Alspector v. Alspector* (1957), 9 D.L.R. (2d) 679 (Ont. C.A.).

Secondly, Marriage Acts with capacity to consent and age of consent provisions abound³³, and Human Rights Acts in place to prevent discrimination could be applied to cases of involuntary marriage. Indeed, forced marriages seem to fall under Section 15 (1) of the *Canadian Charter of Rights and Freedoms* (1982), which regulates the interaction between federal, provincial and territorial governments and individual citizens. The Charter states that “Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”³⁴ However, how exactly Section 15 could be used to establish government action or inaction causing discrimination is not clear, nor has this avenue been pursued legally in response to a forced marriage case since 1982. Thirdly, while it is clear that under Family Law, free and informed consent must be given by both parties for a marriage to be legally valid, a marriage can *only* be declared invalid when one of the spouses seeks a court order that the marriage is void on the ground of duress. As Gillian Blackell of the Department of Justice explains,

There are a number of reported decisions involving instances of alleged forced marriage where individuals have sought such a court order. In a number of instances the court found there was no true consent to the marriage, and yet in others courts found that participation at the time of the wedding indicated that there was reluctant consent.³⁵

³³ See, for example, *The Marriage Act*, C.C.S.M. c.M50 for the province of Manitoba and *Marriage Act*, R.S.O. 1990, c. M.3 for the province of Ontario.

³⁴ “Canadian Charter of Rights and Freedoms.” Heritage Canada, p. 3:
<http://publications.gc.ca/collections/Collection/CH37-4-3-2002E.pdf>

³⁵ Gillian Blackell, “Forced Marriage – Legislative Frameworks,” Presentation at *It’s a Choice: Forced Marriage Conference* organized by the South Asian Legal Clinic of Ontario in Toronto, October 3, 2012.

The potential risks involved for a victim in getting a court order, including the burden of proving she/he did not consent, fear of public stigma, and the difficulties of reliving their traumatic experiences, are among the reasons why seeking a court order has not been a common legal avenue.³⁶

Thirdly, a range of existing *Criminal Code* provisions can be relevant in cases involving forced marriage. These include: uttering threats (s. 264.1); assault (causing bodily harm, with a weapon and aggravated assault) (ss. 265-268); sexual assault (causing bodily harm, with a weapon and aggravated sexual assault) (ss. 271-273); kidnapping (s. 279); forcible confinement (s. 279-2); abduction of a young person (ss. 280-283); procuring feigned marriage (s. 292); removal of a child from Canada (with intent to commit an act outside of Canada that would be one of the listed offences if committed in Canada) (s. 273.3); extortion (s. 346); intimidation (s. 423); sexual offences against children and youth (ss. 151, 152, 153, 155 and 170-172); failure to provide necessities of life and abandoning child (ss. 215 and 218); abduction of a young person (ss.280-283) breach of a court order, recognizance (peace bond), and probation order (ss.145(3), 127, 811, and 733.1).³⁷

Fourth, in addition to criminal law, there are potential provisions that fall under Child Welfare Law.³⁸ For instance, “no-contact orders” can be issued via child protection laws at the provincial/territorial level, which provide for state intervention when parents

³⁶ Deepa Mattoo, *Interview by Author*, 11 August, 2010.

³⁷ See *Criminal Code* (R.S.C., 1985, c. C-46), available online at: <http://laws-lois.justice.gc.ca/eng/acts/C-46/FullText.html>

³⁸ Under child welfare laws in most provinces, social workers can intervene if there is suspected interference to a child’s well-being.

or legal guardians are unable, or unwilling, to meet a child's physical, emotional and/or psychological needs. This is relevant in cases of forced marriage in which the victim meets the age criterion for child protection intervention, which varies across Canada between a maximum of 16 and 19 years of age, with higher limits for certain services.³⁹

Lastly, current family violence legislation in nine provinces (all but British Columbia, Ontario, New Brunswick and Quebec) seems to apply to forced marriage cases.⁴⁰ Family violence provisions offer victims around the clock access to practical remedies that are not available through the criminal justice system. These civil remedies include: emergency protection orders granting the victim temporary exclusive occupation of the home; removal of the abuser from the home; seizure of weapons; no contact/communication orders; temporary possession of personal property; temporary care and custody of the children to the victim; and specific prohibitions against selling, converting, or damaging property.

While these provisions and existing laws provide greater legal conceptual clarity and theoretical ways in which perpetrators of forced marriages might be held responsible at the international and domestic levels, as we will see in Chapters III to V, the complexities at play since 1948 have been far greater than those grasped within the various legal conventions, treaties and consensus documents. In Dauvergne's words, as

³⁹ Forced marriage among children and youth is a risk indicator of sexual exploitation in general, and commercial sexual exploitation in particular. I identified this as a theme through Nvivo analysis.

⁴⁰ Nine relevant civil domestic / family violence acts exist at the provincial level: Saskatchewan: *Victims of Domestic Violence Act* (1995); Prince Edward Island: *Victims of Family Violence Act* (1996); Alberta: *Protection Against Family Violence Act* (1999); Manitoba: *Domestic Violence and Stalking Act* (1999); The Yukon: *Family Violence Prevention Act* (1999); Nova Scotia: *Domestic Violence Intervention Act* (2003); The Northwest Territories: *Protection Against Family Violence Act* (2005); Newfoundland and Labrador: *Family Violence Prevention Act* (2006); and Nunavut: *Family Abuse Intervention Act* (2008).

acknowledged by many scholars, “That bright line drawing exercise that the law does just does absolutely no justice to complex social realities.”⁴¹ The archival documents, court records and respondents interviewed for this study consistently revealed the substantive limitations of legal instruments. As we will see in the chapters that follow, many of the issues have been practical. Like Sandeep, numerous persons in forced marriage situations have shown extreme hesitation to criminalize their own parents, family or community members. Many have feared social ostracism, and chosen to move forward without involving state and legal authorities.⁴² Further, survivors of forced marriage, like the general public, report a deep respect for cultural traditions and practices that dictate actions that can make it difficult to discern authentic, individual feelings during courtships and marriages. Consider the image below that was brought to my attention by Aboriginal historian Brittany Luby, which dates from 1961.

⁴¹ Catherine Dauvergne, *Interview by Author, Digital Recording* (15 December, 2011).

⁴² Deepa Mattoo, *Follow-Up Interview by Author, Digital Recording*, (15 November, 2011).

Figure V: Pudlo/Egyvudluk Pootoogook - Man Carrying Reluctant Wife, 1961.



Stencil, 42.5 x 35.8 cm. Cape Dorset print catalogue, 1961, No. 16.
James A. Houston (1967) and Diamond Jenness (1923) both reported that it was considered good manners for a girl to show some reluctance in leaving her family to be married.⁴³

As the caption explains, “it was considered good manners for a girl to show some reluctance in leaving her family to be married.” Within this context, young Aboriginal

⁴³ I am grateful to Brittany Luby for drawing this image to my attention. A well connected Aboriginal historian and York University colleague now teaching as an Assistant Professor at Laurentian University, she came across it while conducting research for a different project. Luby hails from Kenora and has rich knowledge of Aboriginal oral traditions in Canada. She has done a lot of community work and her father, Allan Luby, is a former two-term chief of Dalles First Nation.

women were thus expected to feign resistance when getting married.⁴⁴ Analysis of the picture above reveals how extremely difficult it is to know beyond a doubt if the young woman represented in this stencil, or any person for that matter, feigns resistance or really resists – a major criterion in determining consent under the law. Determining what is going on in instances like this one will entail sustained research and investigation based on each context as well as a sound understanding and acknowledgement of complex human behaviours, customs and traditions. As we will see in Chapter III, several documented cases exist of forced marriages of Indian Residential School (IRS) pupils by principles and administrators.⁴⁵ Access to these classified documents may make it possible to ascertain where forced marriages were perpetrated in IRS, including at Cape Dorset IRS or in other IRS to which Cape Dorset children and youth were sent.⁴⁶

Requiring any particular pattern of enforcement of forced marriage law, even of what is officially on the books to protect children and prevent abuses like those perpetrated in IRS, has proved to be a challenge. Catherine stresses that “the bare legal qualifications of marriage [...] are so far away from [...] what makes a good marriage.”⁴⁷ To be sure, beyond consent, reoccurring qualities for a good marriage or relationship include mutual respect, trust, consideration, friendship, protection, thoughtfulness, commitment, equality, and love. Since 1948, not *one* case that has met the threshold of

⁴⁴ Wife kidnapping is also considered part of marriage rituals among other cultures and nations, including in Kenya.

⁴⁵ They will be explored in Chapter III.

⁴⁶ As noted in the conclusion, I intend to pursue this as a post-doctoral project. Known as the Federal Hostel at Cape Dorset and Kinngait, Cape Dorset IRS was non-denominational and operated from January 1, 1962 to June 30, 1965.

⁴⁷ Catherine, *Interview by Author, Digital Recording* (University of British Columbia, 15 December, 2011).

forced or servile marriage under international law has seen the Canadian state held liable under international human rights law, or an individual held liable under criminal law. As one respondent with legal expertise on forced marriage pointed out with respect to international law,

Getting from finding that there is a treaty, to finding that people are going to jail because they don't do what the treaty says, is a million miles. [...] The central government in Canada has the power to ratify treaties, but the treaty that is ratified, is not binding in Canadian law unless it is also passed through a legislature. [...] Either the whole treaty or what is more common in Canada, specific provisions of the treaty, can then be implemented into Canadian law through an act of Parliament or in areas of provincial jurisdiction.⁴⁸

As noted above in the section on domestic law, some aspects of marriage fall under provincial jurisdiction, while others fall under federal jurisdiction, which adds to the complexity. Also, respondents consulted for this study stressed the huge limitations of the law and justice system as a viable recourse for persons in forced marriage situations. For decades, they and their loved ones have relied heavily on nongovernmental organizations, networks and community alliances to provide support, especially women's groups and legal aid organizations. These groups include the National Network of Agencies Against Forced Marriage (NAAFAM), the South Asian Legal Clinic of Ontario (North York), Alliance of Multicultural Agencies Against Forced Marriage (Agincourt), le Centre des femmes de Verdun (Montréal), Barbara Schlifer Clinic (Toronto), Sandgate Shelter (York

⁴⁸ Ibid.

Region), Legal Assistance of Windsor (Windsor), and Interval House (Ottawa).⁴⁹ These groups have worked in collaboration with police, RCMP, government, border and airport security officials to assist persons in forced marriage situations. Cases have been brought to their attention from clients of various backgrounds who have sought help after being forced into marriages through physical and emotional abuse, false pretenses and/or exploitation. The South Asian Legal Clinic of Ontario (SALCO) alone has seen hundreds of cases.⁵⁰ A recent study that focused on “non-consent” found 40 Canadian refugee asylum cases (13 tribunal decisions and 27 decisions of the Federal Court) that fell under ‘forced marriage’ ‘forced to marry’ and ‘pressure to marry’ from January 1995 to December 2008.⁵¹

The voices of these groups have – more often than not – not been heard or acknowledged by state actors who regulate the law, nor have their voices or those of survivors informed jurisprudence. Longstanding service providers and survivors of varying ages and backgrounds emphasize that court cases tend to exacerbate the situation for the victim and victim’s family or community. As a result, and as can be seen in more detail in the epilogue to my dissertation, these groups collectively stress the limitations of a reactive legal-based approach to ending forced marriages. They advocate for a

⁴⁹ For example, SALCO’s Forced Marriages Project began in 2005. Its advisory board includes members of the federal departments of justice, foreign affairs and international trade, and the clinic is involved in several dozen cases of “forced marriages” annually.

⁵⁰ One SALCO-affiliated Violence Against Women Counselor helped a 44 year old woman in a forced marriage, SALCO lawyer Deepa Mattoo met an Orthodox Jewish woman at a training session who told her forced marriages were occurring in her community, and others have worked on cases involving gay men, Mormons in Bountiful British Columbia, and new immigrant francophone communities in Quebec.

⁵¹ Catherine Dauvergne, and Jenni Millbank “Forced Marriage as a Harm in Domestic and International Law.” *Modern Law Review*, (2010) 73: 57-88. Canada has accepted gender-based grounds for refugee claims on the basis of forced marriage since the mid-1990s.

proactive approach through which focus be placed on education and prevention, not on criminalization.⁵²

In lieu of criminalization, the Canadian Network of Agencies Against Forced Marriage (NAAFAM) has pursued a variety of family and domestic law responses. They have not investigated or found any use-value in Canada's international legal treaty obligations related to servile and forced marriage, which scholars (as seen above) have argued could/should have persuasive force in domestic and inter-jurisdictional cases. The exception to this is support of current efforts to investigate and determine how victims might be protected and assisted under slavery and human trafficking legislation. Although many forced marriage cases have servile attributes, it has proved difficult for case workers to ascertain whether they constitute slavery. SALCO lawyer Deepa Mattoo agrees that elements of *de facto* ownership characteristic of servile marriage as established by the 1956 Supplementary Convention, have characterized Sandeep's case and others. She also agrees that some cases seem to constitute slavery under the international definitions. However, given (1) that no clear domestic law provisions have been in place in relation to servile marriage as defined in international treaties ratified by Canada, (2) the longstanding, pervasive popular understanding of slavery as the transatlantic African slave trade⁵³, and (3) the huge variation and grey zones between

⁵² Shirley, *Interview by Author, Digital Recording* (Flavell House Law Library, 10 August, 2011).

⁵³ While Mattoo and NAAFAM have not emphasized the problematic history of the so-called "white slave trade," scholars of slavery have done so.

arranged, forced and servile marriage cases, NAAFAM has pursued other, more practical avenues.⁵⁴

Like NAAFAM and SALCO, many Canadian and international organizations engaged in work on involuntary marriage have struggled or not seen the value in legally delimiting between a forced and a servile marriage. The 2010 Trafficking in Persons (TIP) Report released by the United States State Department also failed to make the distinction between the two clear. Under the heading “Forced and child marriages,” it stated

Around the world, forced or coerced marriages are used by parents and families as a means to many ends, but most commonly to settle debt, receive dowry payments, further economic interests, relieve poverty, obtain residency permits, display status, provide inheritance, counteract promiscuity, and serve as compensation for a wrongful death. Forced marriages render the forced party (in most cases a woman) vulnerable to abuse and exploitation by her spouse or his family, who exercise significantly greater power and control. This can trap the victim in conditions of enslavement, particularly in domestic or sexual servitude.⁵⁵

The same words, “exercise,” and “power,” are in the 1926 Slavery Convention’s definition of slavery, the word “control” in the State Department description arguably paraphrases the word “over” in said definition, and the description alludes to instances deemed “servile marriage” in the 1956 Supplementary Convention. Recall that Jean

⁵⁴ Mattoo, *Interview by Author*, 11 August, 2010. The law does not figure in the list of ways “forced marriage” can be addressed in SALCO’s project statement and tool kit for service providers. Rather, these documents suggest “taking an anti-racist/anti-oppressive approach,” “institutional commitment to fighting violence / abuse of human rights,” “building public and community accountability,” “creating safe spaces that encourage open and inclusive dialogue,” “prevention-focused initiatives across communities,” “engaging with both youth and parents / caregivers / family members,” and “ensuring service to both men and women; of all sexual orientations.” See South Asian Legal Clinic of Ontario (SALCO), “Forced Marriage Project Statement.” April 23, 2010 and “Forced/non-consensual marriages: A Tool Kit for service providers Project Statement.” June, 2010.

⁵⁵ United States Department of State, “Trafficking in Persons Report 2010,” 14, June, 2010, 15, Online: <http://www.state.gov/documents/organization/142979.pdf>. LOOK AT 2013 REPORT.

Allain has found that instances wherein a girl or woman is either purchased, transferred, or inherited under the pretext of marriage “are, in law – in all circumstances – ‘slavery’ as defined by the 1926 Slavery Convention.”⁵⁶ Although the essence of the 1926 Convention definition repeated above is in the TIP report description and the phrases “trafficking of women into involuntary servitude through forced marriage,” “sold to settle debts,” and “forced marriage” appear dozens of times throughout the report, the term “servile marriage” only appears once – in the US State Department report on Costa Rica.⁵⁷

While some individuals in forced marriage situations have certainly been refugees, asylum seekers or immigrants (often the stereotyped groups in Canada over the past 60 years), the examples of long-time Canadian citizens explored elsewhere in my thesis illustrate the cross-cultural nature of this issue grounded in the macro-level confluence of power, control and dominance affecting men, women and children of a diverse range of ages, ethnicities, cultures and sexualities in Canada. As we have seen, while certain groups are indeed overrepresented, the presumption by some Canadians that a connection only exists between forced marriages and specific religious, immigrant and/or refugee communities does not hold.

The sparse legal scholarship on forced marriage in Canada is also marked by a lack of analysis on cases impacting men, and gender as it intersects with race, sexuality and class dynamics. For instance, in the *Traoré v. Canada* judicial review decision in the

⁵⁶ Allain, “Servile Marriage as Slavery,” 1.

⁵⁷ United States Department of State, “TIP Report,” 123. As we will see later, Costa Rica is a destination country for marriage trafficking of young Canadian Mormon girls.

Canadian Federal Court on 28 October 2003, a young Malian man challenged the finding of the Immigration Refugee Board that only women were victims of forced marriage.⁵⁸ Traoré lost his challenge. Dauvergne and Millbank's research on forced marriage refugee claims like his is pioneering. They were the first to search for and conduct analysis on cases with this commonality, and I interviewed Dauvergne as part of this project. Published in 2010 and 2011, her and Millbank's collaborative research is now a few years out of date. Largely confined to refugee and human rights law audiences, their findings have, unfortunately, not made their way into historical or comparative work on forced marriage in Canada. As they point out, forced marriage refugee claims were accepted by Canada under gender-based grounds, but focus has remained on cases involving women and girls with inadequate acknowledgement and acceptance of cases involving men and the LGBTQ community.⁵⁹ Furthermore, Sherene Razack has identified racism and the "myth of the civilised European" in recent domestic responses to forced marriage in Europe that is manifested in similar ways in the denial by Canadians that forced marriage exists among white communities.⁶⁰ As other chapters in my thesis stress, these attitudes share commonalities with tendencies displayed by colonial powers regulating marriage in early Canada, and, to some extent, mirror the

⁵⁸ Dauvergne and Millbank take note of this case. See "Forced Marriage as a Harm in Domestic and International Law," *The Modern Law Review*, 2010, (73)1, 80. Men comprise approximately 14% of total "forced marriage" cases in the United Kingdom, and the number of calls from men to the forced marriage unit hotline in the United Kingdom increased by over 60% from 2008 to 2009. See BBC News, "Specialist unit reports more male forced marriages", 30 June, 2010, <http://www.bbc.co.uk/news/10469935>.

⁵⁹ *Ibid.*, 70.

⁶⁰ Sherene H. Razack, "Imperilled Muslim women, dangerous Muslim men and civilised Europeans: legal and social responses to forced marriages," *Feminist Legal Studies* Aug. 2004: 129-174. Also see Constance Backhouse, "Pure Patriarchy: Nineteenth-Century Canadian Marriage." 31 *McGill L. J.* 264 1985-1986.

ways in which colonial powers first addressed forced marriage within the international arena. Overall, a multifaceted mix of factors linked to gender, sexuality, class and race dynamics have influenced the legal regulation of marriage by the Canadian state since its origins, and have had enduring consequences.

Traffic in Marriage: The Failure of Efforts to Incorporate a Trafficking Lens

Across the globe men, women and children have been trafficked in marriage. Canada has proved to be no exception. Sandeep was arguably trafficked by her father from the United Kingdom to British Columbia. Other survivors have been trafficked in marriage between Canada and the United States, South Asia, Latin America, the Middle East, Europe and Africa. In 2011, the Social Sciences and Humanities Research Council of Canada (SSHRC) funded the largest Canadian human trafficking study to date, which covered 29 countries. It found five confirmed cases of TIP, two of which met the threshold of marriage trafficking between Ukraine and Canada, one that met the threshold of labour trafficking, and two for which exact details were unknown. Researchers also identified a borderline case of marriage trafficking of an Uzbek woman in Canada.⁶¹

In spite of this, marriage trafficking has not been addressed in most studies of forced marriage and marriage more generally, or slavery for that matter.⁶² And, to date, the vagueness of trafficking legislation in Canada (Section 279 of the Criminal Code) and

⁶¹ Natalya Timoshkina, "Human Trafficking from the Former Eastern Bloc to Canada: Executive Summary," Lakehead University-Orillia: SSHRC 2011-2013, 1.

⁶² Although most Canadians today think of sex trafficking when they hear the word "trafficking", we need to stop thinking of trafficking as one categorical thing. Canada is a source and destination country for human trafficking for the purposes of forced sex, labour and both voluntary and involuntary marriage. Cases of trafficking in marriage are receiving more and more attention.

the justice system's conflation of human trafficking with pimping and prostitution (Section 212) have resulted in a response to trafficking that has prioritized and focused on cases of commercial sexual exploitation⁶³, by and large ignoring serious labour and marriage trafficking offenses Canada is bound to address under international law. Indeed, Canada has ratified the 2000 UN Palermo Protocol that established a common definition of human trafficking that includes forced marriage under the expression "slavery or practices similar to slavery" as defined in the 1956 Slavery Convention. Article 3(a) of the Protocol reads:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

⁶³ On this theme, see Katrin Roots, "Trafficking or Pimping" 2013. Commercial sexual exploitation is the sexual exploitation of a child, teen or adult for money or anything of value, including, but not limited to, food, a place to stay, status, clothes, transportation, cigarettes, alcohol and drugs. The Canadian Criminal Code defines human trafficking in terms of three major elements: **control, exploitation and threat to safety**. According to the Criminal Code, human trafficking is the recruiting, transporting, transferring, receiving, holding, concealing or harbouring, or exercising control, direction or influence over the movements of a person for the purpose of exploiting them or facilitating their exploitation. Under the Criminal Code, exploitation means causing a person to provide or offer to provide a labour or service by engaging in conduct that can reasonably be expected to cause the other person to believe that their safety or the safety of a person they know will be threatened if they did not provide or offer to provide the labour or service. Under Canadian law, no one can consent to any of the activities that are part of the definition of human trafficking. (*Criminal Code of Canada*, Section 279.01-279.04).

The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, also known as the *Trafficking Protocol* or *Palermo Protocol*, which was adopted by the UNGA in 2000, and ratified by Canada in 2002, defines human trafficking as the **act** of "recruitment, transportation, transfer, harboring or receipt of persons" by specific **means** that include "threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person" for the **purpose** of exploitation (Section 3a). The Protocol defines exploitation as including "at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs" (3a). Consent of a victim to the exploitative situation is irrelevant, to the extent that the means outlined in the definition have been used. In the case of children under 18 years of age, the means used are irrelevant. (3b) (UNGA, *Palermo Protocol*, Article 3, 2000)

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, **slavery or practices similar to slavery**, servitude or the removal of organs.⁶⁴

Elizabeth Warner has noted that “Many international Conventions [...] are not self-executing; they instead constitute promises by the adopting parties to enact domestic legislation and adopt other measures to achieve the desired objectives, which, even if mandatory, are often stated in language too general and aspirational to constitute enforceable norms in and of themselves.”⁶⁵ Unlike the 1926 and 1956 Slavery Conventions and other international treaties that contain forced and servile marriage provisions but have not been effective at the domestic level, early speculation following Canada’s accession to the Palermo Protocol and subsequent TIP Criminal Code provisions in 2005 pointed to the potential usefulness of a human trafficking lens for cases of trafficking for the purposes of commercial sexual exploitation, forced labour and forced marriage. Some hypothesized TIP laws represented “the most comprehensive approach of any of the existing international conventions” and could go a long way in assisting survivors of trafficking for the purpose of forced marriage.⁶⁶ Under the Palermo Protocol, consent – the complex criteria that has become so problematic in cases of forced marriage – is irrelevant. Further, as noted above, the phrase “slavery or practices similar to slavery” from the 1956 Supplement Convention is included, suggesting that

⁶⁴ Emphasis added to “slavery or practices similar to slavery”. See (Palermo) Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000

⁶⁵ Warner, Elizabeth. “Behind the wedding veil: child marriage as a form of trafficking in girls,” *American University Journal of Gender, Social Policy, and the Law*, Summer 2004: 247.

⁶⁶ *Ibid.*, 263.

servile forms of forced marriage fall within the threshold of “exploitation” under which the Protocol requires States to adopt criminal penalties.⁶⁷ In 2010, forced marriages with Canadian components began to be investigated within a human trafficking framework. In 2011, training and a curriculum unit on marriage trafficking were also launched across the country.⁶⁸ As I drafted this chapter in 2012, the first forced marriage cases with elements of trafficking were in the process of going before the courts.⁶⁹

Overall, although it was promising, human trafficking legislation has had many of the same frailties as other legislation. The few cases of trafficking for the purpose of forced marriage that have gone before Canadian courts have been unsuccessful. A lack of education on the existence of marriage trafficking remains among judges, and the Canadian government has sent individuals trafficked to Canada for the purpose of a forced marriage back to their home countries, even when this has put their lives at great risk.⁷⁰ As the Canadian Council for Refugees stresses, “recent changes to immigration and refugee policy have created new barriers for trafficked persons to access status in

⁶⁷ Ibid.

⁶⁸ I sat on the steering committee for the South Asian Women’s Centre’s project on Forced Marriage and Human Trafficking, which focused precisely on this topic. ⁶⁸ The South Asian Women’s Centre (SAWC) in Toronto received provincial government funding for a joint human trafficking forced marriage initiative.

⁶⁹ Cases were brought to my attention by Covenant House, Walk With Me Canada Victim Services, Interval House, and Legal Assistance of Windsor between October 2011 and November 2013.

⁷⁰ For instance, in 2012, a woman of Roma origin put her life gravely at risk by fleeing and reporting her husband to Toronto police. Threats and letters from her mother revealed that his family was looking for revenge. As such, her return to the Czech Republic would put her life in jeopardy. In spite of efforts by Covenant House Toronto and the Ontario Coalition Against Human Trafficking, among other groups, she was not granted a temporary resident permit. A few months after she was deported, Toronto Police asked to meet with her to prepare for their court case against her husband.

Canada, leaving them even more vulnerable.”⁷¹ This is particularly the case when it comes to the greater hurdles and difficulties in securing temporary resident permits for trafficked persons. Lastly, and perhaps most significantly, like persons in other forced marriage situations, those in marriage trafficking situations have been reluctant to criminalize their loved ones, friends, and/or community members.

As seen above, while Canada has established protocols for human trafficking, it did not formally decide to (or not to) establish criminal penalties for forced marriage practices at the domestic level until *Bill S-7* was passed in 2015.⁷² Nevertheless, some measures have been taken since the early 2000s. The Department of Foreign Affairs and International Trade (DFAIT) has warned Canadian citizens of the risk of forced marriage, and deemed forced marriage a violation of human rights. DFAIT also distinguished between arranged and forced marriages, stating that

Arranged marriage is an age-old tradition that is commonplace in many countries. Typically, parents recommend marriage candidates to their children, who have the right to choose and to get to know each other before making a decision. A forced marriage is one that is conducted without the consent of both partners. Unless you are coerced into marriage, the union does not constitute a violation of your human rights.⁷³

Servile marriage – more specifically, its relationship to forced marriage under Canadian domestic law and Canada’s obligation to address servile forms of forced marriage within its jurisdiction – goes unmentioned in this statement. Further, the deep complexity

⁷¹ Canadian Council for Refugees, “Temporary Resident Permits: Limits to protection for trafficked persons,” 2012, 2. Available online at: <http://ccrweb.ca/files/temporary-resident-permit-report.pdf>

⁷² See

<http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&Bill=S7&Parl=41&Ses=2>

⁷³ Foreign Affairs and International Trade Canada, “Marriage Overseas – Facts”, Item 10, http://www.voyage.gc.ca/faq/marriage-abroad_mariages-etranger-eng.asp#11.

surrounding consent (as illustrated via the consent continuum), and the deep constraints that come to bear on consent, including family and community ties, are not captured.⁷⁴

Contact numbers are provided for those fearing forced marriage situations or who are subjected to forced marriage abroad.⁷⁵ However, due to the lack of a clear system in place by which a victim may return home or through which a designated person can bring them back when they have been taken outside of the country to be married against their will, organizations like SALCO have been limited to assisting individuals who are physically in Canada.⁷⁶ They have not been able to intervene directly in cases involving individuals forced into a marriage abroad. Either the individual has been abroad when they have called, or they have recently come to Canada after their forced marriage abroad. In a statement responding to the question, “What can I do if I am forced into marriage in a foreign country?” DFAIT asserts the following:

There are reports of Canadian citizens being forced into marriage without prior knowledge or consent. Forced marriages have occurred in a number of countries, such as Afghanistan, Algeria, Bangladesh, Egypt, Ethiopia, India, Libya, Morocco, Pakistan, Somalia and Sudan. Parents, relatives, and communities may use relentless pressure, emotional blackmail, threats, abduction, imprisonment, and physical violence to coerce people to enter into marriage. While both men and women experience forced marriage, it is most commonly perpetrated against women, who may be

⁷⁴ See Sundari Anitha and Aisha Gill’s piece on the UK context, especially the section on consent in relation to case law examples from pp. 168-172. Anitha and Gill, “Coercion, Consent and the Forced Marriage Debate in the UK,” *Fem Leg Stud* (2009) 17: 165-184.

⁷⁵ Department of Foreign Affairs and International Trade Canada, “Travel Report: Pakistan,” Online: Consular Affairs, <http://www.voyage.gc.ca/dest/reporten.asp?country=229000#3>.

⁷⁶ Mattoo, *Interview by Author*, 11 August, 2010. In addition, as is the case in the US, there is a blind spot with respect to forced marriage in Canada’s refugee system. See Kim Thuy Seelinger, “Forced marriage and asylum: perceiving the invisible harm,” *Columbia Human Rights Law Review*, Fall 2010: 55-117. As Sonja Grover explains, Canada does not provide asylum to female children under the basis of gender persecution in the form of child marriage, which is differentiated from a “forced marriage.” See “Children’s rights as ground zero in the debate on the universality of human rights: the child marriage issue as a case example.” *Original Law Review* July 2006: 72-79.

unable to return to Canada. Canada opposes the practice of forced marriage and urges all countries to respect their international human rights obligations relating to free and full consent to marriage. Forced marriage constitutes a human rights violation under international law, to which Canada is a signatory.⁷⁷

Here, what exactly constitutes what is deemed “forced marriage” is not clear. Further, this statement does not take into account the fact that in many instances, individuals without Canadian citizenship have come from abroad and been coerced into marriages on Canadian soil, where Canada has, in the statement’s words, “international human rights obligations relating to free and full consent in marriage.”⁷⁸ Indeed, Canadian citizens, permanent residents and/or refugees have been and continue to be forced to marry abroad or domestically. Some have been human trafficked as defined in the 2000 Palermo Protocol. Some have been commodified – that is purchased, transferred and/or inherited – as defined as “servile marriage” in the 1956 Supplementary Convention, which Canada ratified on 10 January, 1963. And, others have been subject to “powers attaching to the right of ownership,” as defined in the 1926 Slavery Convention, which Canada signed on 17 December, 1953. While no rights to own, traffic, abuse, enslave, harm, coerce, deceive, sell or abuse men, women and children within the context of marriage have existed under international or domestic law since 1948, the cases elaborated in this thesis and other studies the world over highlight the reality of the substantive limitations of the law.

⁷⁷ Foreign Affairs and International Trade Canada, “Marriage Overseas – Facts”, Item 11, http://www.voyage.gc.ca/faq/marriage-abroad_mariages-etranger-eng.asp#11.

⁷⁸ Ibid.

The human trafficking provisions in place, including a small fund for victims, and the unlikely possibility of getting temporary residency permits for those who have come from abroad and may face danger if they return to their native countries after fleeing forced marriages, are lacking. Indeed, significant gaps remain. No clear system has been established in Canada under which a victim of forced marriage has been able to return home or through which a designated person has been able to bring them back when they have been taken outside of the country.⁷⁹ Moreover, as will be seen later in this chapter, many victims of forced marriages have not had the ability or known how to exercise their human rights when their forced marriages took place. They, like the general public, report how challenging and messy it can be to make sense of conflicting rights at play. The perpetrators of forced marriages are often family members of the victims, against whom the latter by-and-large do not wish to initiate criminal proceedings. As a result, domestic cases (some of which are now being looked at through a human trafficking lens) have long been dealt with in Canada under domestic family law. Recalling the historical shift for women that came with the Family Law Act, Mary, a Polish witness of forced marriage in her family, explains “I’m 100% behind the Family Law Act. I think it was the best thing that ever happened to women’s rights. When family law came in we were all really delighted because it meant that men couldn’t leave their wives out in the cold and starving. It recognized women’s work in the household as employment.”⁸⁰ Prior to this,

⁷⁹ Mattoo, *Interview by Author*, 11 August, 2010.

⁸⁰ Mary, *Interview by Author, Digital Recording* (York University, 1 December, 2011).

“unless someone actually struck their wife or husband, nothing was ever done.”⁸¹ The most common legal request made by persons in forced marriage situations in the last few decades has been help in getting assistance to obtain a protection order.⁸² Next to this have been requests for assistance in seeking an annulment or divorce, both of which fall under family law. Although it has been possible to get annulments, most survivors have gotten divorces. If they signed papers to “get a person into the country,” even if they signed under duress, “a lot of problems for them” have surfaced with immigration authorities, and they and their service providers have found that they have been “better off just getting a divorce.”⁸³

Over the last few decades an alarming phenomenon linked to immigration has surfaced. Specific groups, some well-intentioned, some not – and even demonstrating racist agendas – have raised concerns related to marriages linked to immigration fraud.⁸⁴ In Minister Jason Kenny’s words, “The Jig is up on Marriage Fraud.”⁸⁵ To be sure, it is important to take action against immigration and marriage fraud. However, the emphasis on fraud by Minister Kenny and by the mainstream media has led to the downplaying of forced marriages perpetuated in connection to marriage fraud, overlooking the realities of abuse and exploitation of victims of forced marriage, who are not trying to enter Canada

⁸¹ Ibid.

⁸² Mattoo, *Interview by Author*, 11 August, 2010.

⁸³ Shirley, *Interview by Author*, 10 August, 2011.

⁸⁴ Mattoo, *Interview by Author*, 11 August, 2010. I made several attempts to contact Canadians Against Immigration Fraud, the most vocal group on this issue. The organization did not answer or return any of my calls or e-mails, asking to speak to a representative about their work in relation to marriage. It is not clear if they are intentionally promoting a racist, anti-immigrant agenda.

⁸⁵ Citizenship and Immigration Canada, “News Release — ‘The Jig is Up on Marriage Fraud,’ says Minister Kenney,” October 26, 2012. <http://www.cic.gc.ca/english/department/media/releases/2012/2012-10-26.asp>

illegally and the fact that many forced marriages involve Canadian citizens. Under a new provision, influenced by fears of fraud and immigration, “The spouse or partner must live in a legitimate relationship with their sponsor for two years from the day on which they receive their permanent resident status in Canada.”⁸⁶ This new provision sends the message to victims that once they have been married against their will to a Canadian immigrant or citizen they have to remain married until they get Canadian status. In forced marriage specialist Deepa Mattoo’s words, “you are basically telling me that even if I’m facing violence, I should live in a situation of being a slave to this violence so that I can get my status and then do something about it.”⁸⁷ Multiple respondents consulted for this study warned of the danger of marriage fraud concerns taking away much-needed awareness of, and action against, the brutal realities of forced marriage in Canada. Early efforts are underway to challenge this tactic, and better represent the complexities at play. Further, comparative studies on legal responses show that a multi-dimensional approach to forced marriage is needed.⁸⁸ Efforts to nullify marriage on the grounds of duress and civil law remedies which allow victims to initiate and cease proceedings are potential avenues Canada might further pursue. Time will tell if incorporating a human trafficking lens is viable. One debate connected to all legal recourses remains a significant source of contention: to criminalize or not to criminalize?

⁸⁶ Ibid.

⁸⁷ Deepa Mattoo, *Follow-Up Interview by Author, Digital Recording*, (SALCO Office, 15 November, 2011).

⁸⁸ See, for example, Brigitte Clark and Claudina Richard, “The prevention and prohibition of forced marriages - a comparative approach.” *International and Comparative Law Quarterly*, 57.3 (2008): 501-528.

To Criminalize or not to Criminalize?

Debate surrounding whether to criminalize forms of forced marriage as opposed to the acts associated to these marriages (i.e. polygamy, adoption, kidnapping, trafficking, illegal migration/immigration, and violence) has loomed large.⁸⁹ As Osgoode Hall Law School Professor Alan Young asks, “Do we want to single it out so people realize it’s wrong?”⁹⁰ As enumerated above, there are tools in the Canadian criminal code whereby you cannot force another person to marry against their will, but Canada lacked a *specific* offense of “forcing someone to marry” until Bill S-7 was passed in 2015. Based on Ontario case studies, focus groups and cases in other jurisdictions, criminalization on the basis of an involuntary marriage has not been pursued in the past for one reason: public stigma. According to Mattoo,

I was able to corroborate this with international studies. They do not want any stigma to come to their families. They are not ready to talk to police because there is no social support left for them once they do from anyone. And they don’t want anything to happen to their families. They say ‘We don’t want our families to be criminalized. It’s just that they were socialized in a way that this is how *they* think it should be done.’⁹¹

SALCO and 11 additional agencies are against criminalization, fearing it will perpetuate myths and deny justice.⁹² Further, criminal prosecution of an individual does

⁸⁹ Two respondents informed me of cases of Afghan men and women in Canada adopting girls from abroad and then forcing them to serve as second or third wives in polygamous relationships. I have not been able to corroborate this.

⁹⁰ Cited in Cristin Schmitz, “Forced Marriage: Is it a Crime?”, *The Lawyers Weekly*, August 31 2012, <http://www.lawyersweekly.ca/index.php?section=article&volume=32&number=16&article=1>.

⁹¹ Ibid.

⁹² See the joint statement in reaction to Bill S-7 published by SALCO, the Barbara Schlifer Commemorative Clinic, Metro Toronto Chinese & Southeast Asian Legal Clinic, South Asian Women’s Centre, Woman Abuse Council of Toronto, Federation of Muslim Women, The Redwood Shelter, Rights of Non-Status Women Network, FCJ Refugee Centre, La Maison Shelter, Rupaleem Bhuyan and Anita

not address the broader institutional structures and community-based contexts of relations, inequalities and gender-based violence experienced by persons in forced marriage situations who, in addition to having these concerns, fear testifying.⁹³ In many cases, victims have been forced into marriages by their entire community, not an individual, which arguably makes the criminal prosecution of one person, among many perpetrators, futile. As one UK survivor explains, “If a girl says no, it’s considered a bad thing,” and “if you didn’t [go along with the marriage] there would be hell to pay from your parents and all your relatives”.⁹⁴ In a Canadian survivor’s words: “You can go to a shelter, but the law, it does not really help.”⁹⁵ Many fear what Reitman has coined the “psychosocial costs of exit” which family and community members have experienced when seeking help, including being disowned.⁹⁶ Others stress that Canada must avoid “putting the cart before the horse” when it comes to criminalization. Parents who perpetrate forced marriages often believe they are doing what is best for their children, and are against government and law enforcement intervention of any kind in what they feel is a private matter. Naïma Bendriss explains that parents and family members “veulent préserver l’intégrité et l’honneur de la famille. Ils sont souvent eux-mêmes

Khanna, November 18 2014,

<http://www.salc.on.ca/FINALBILLS7STATEMENT%20updated%20nov%2018.pdf>

⁹³ Early analysis suggests commonalities between involuntary marriage and domestic violence cases. In both, victims are extremely fearful to exit the situation, to prosecute their abuser, and even more so their parents / family members, and the abuser(s) in question is/are often not held responsible. Further, there seems to be a direct correlation between the amount of support that a victim receives and the outcome of intervention on the part of front-line service groups or NGOs.

⁹⁴ Cited in Anitha and Gill “Coercion, Consent and the Forced Marriage Debate,” 172.

⁹⁵ Amina, *Interview by Author*, 24 April, 2010.

⁹⁶ Anitha and Gill “Coercion, Consent and the Forced Marriage Debate,” 176. See content on the costs of exiting written by forced marriage survivor Jasvinder Sanghera: *Shame* (Hodder & Stoughton Ltd 2007).

influencés dans leur action par leur entourage et ne comprennent pas pourquoi le gouvernement interfère dans une situation considérée comme interne à la famille”.⁹⁷ The concerns set out above indicate that criminalization will likely have harmful consequences for persons in forced marriage situations, their children and family members, be the latter complicit or not in abuse. Together, these accounts invite further reflection on the use of criminal law as a strategy to combat forced marriage.

After she was married against her will, Sandeep was physically abused, ill-treated by her forced husband and in-laws irrespective of whether she was pregnant or unwell, threatened, and forcibly taken to her forced husband’s room or other designated locations whenever he wanted sex.⁹⁸ When Sandeep contracted a sexually transmitted disease confirming her forced husband’s infidelity seven years after their forced marriage, she said to herself “enough is enough”.⁹⁹ She contacted SALCO for help. In 2000, Sandeep spoke to staff lawyer Deepa Mattoo who told her “it sounds like your human rights have been breached”.¹⁰⁰ Sandeep’s response to Mattoo’s comment was telling. She asked “do I have those?”¹⁰¹

⁹⁷ My thanks to Naïma Bendriss for sharing her unpublished research entitled “Guide sur les mariages forcés au Canada à l’usage des intervenants et des intervenantes de terrain,” which she completed in November 2010. The English translation of the quote above is: “want to preserve the integrity and honour of the family. They themselves, in their actions, are often influenced by their entourage and do not understand why the government is interfering in a situation they consider to be internal to the family”.

⁹⁸ Mattoo, *Interview by Author*, 11 August, 2010.

⁹⁹ Sandeep, *Interview by Author*. 14 November, 2011.

¹⁰⁰ *Ibid.* Once a victim, Sandeep is now an advocate against forced marriages, who speaks to raise awareness around the issue. She was a guest speaker at the ‘Right to Choose: an International Symposium on Forced Marriage’ in Toronto in 2008. As she says, “my story could be your story, which together becomes our story.” SALCO, “Tool Kit,” 10.

¹⁰¹ Sandeep, *Interview by Author*, 14 November, 2011.

“It’s not about informing someone of their rights. It’s about getting them to understand they have them.”¹⁰²

Sandeep’s experience relating to challenges exercising her basic human rights is emblematic of other forced marriage cases. While human rights have a long intellectual history, the contemporary international human rights system, as Moyn argues, is a new concept birthed in the 1940s in which important political and moral implications must be teased out.¹⁰³ Further, when the concept of human rights first emerged in Canada, it was linked to civil liberty language and the welfare state.¹⁰⁴ Canadians sought to collectively put the suffering during World War II that led to the 1948 UDHR behind them, and to unite together to create a common future. Since this historical period, there have been many cases of conflicting rights and freedoms (i.e. a collective religious belief vs. a child’s health or right to consent in marriage) that have often paralysed concerned community members and law makers alike. Since the 1960s and 1970s when human rights in Canada became synonymous with civil liberties, this paralysis has continued, and many Canadians (like Sandeep), even if “informed of their rights” in marriage, do not have the freedom or ability to exercise them in reality. For these reasons and others, especially the tension between collective rights over individual rights in the diverse

¹⁰² Navdip, *Interview by Author*, 5 August, 2011.

¹⁰³ See Samuel Moyn: *Human Rights: the Last Utopia: Human Rights in History*. Belknap Press of Harvard University Press, 2010. I am grateful to Samuel Moyn for the insights he shared during a presentation at the “Rethinking Human Rights Workshop: Imagining a Human Rights Museum.” His fellow panelists included Michael Marrus, (moderator) Doris Bergen and Clint Curle of the Canadian Museum for Human Rights. The event was organized by the Centre for the Study of France and the Francophone World. University of Toronto, 11 November, 2011.

¹⁰⁴ *Ibid.*

communities in which forced marriages have been perpetuated, the usefulness of the concept of one's individual human rights in practice is fraught with issues.¹⁰⁵

It is worth noting that none of the forced marriage survivors documentary filmmaker Azra Rashid has interviewed in her career have reported laws relating to their individual human rights in marriage when asked about human rights and marriage laws.¹⁰⁶ During her many years as a front line service provider Sabita witnessed approximately 325 involuntary marriage cases in the province of Ontario. When asked whether marriage laws had been taught or discussed within the families/communities/faith-based spaces of her clients, she explained that "parents didn't know or didn't want to abide by these laws."¹⁰⁷ Jewish Community member Tracy raises an important point: "Part of the problem is it's cultural. And, everybody is, in a funny kind of way, an honest broker, no-one's doing this because they think it's in somebody's bad interest. I notice that people who do very, very awful things to other people always have an honest belief that what they did was right."¹⁰⁸ While culture as an impetus for forced marriage can appear to be neutral, we cannot ignore the patriarchal structure cultures promote and normalize. This normalization and legitimization of patriarchy is

¹⁰⁵ As noted in regards to the term "husband," the legal language used to speak about involuntary marriage, including the use of terms like "in-laws" and "marriage" is problematic in and of itself. Annie Bunting, Rhonda Copelon, Christopher Carlson and Dyan Mazurana have stressed that these terms and their definitions are those of the perpetrators, and are inappropriate when describing a marriage. See Annie Bunting, "Sexual Slavery or "Forced Marriage" in Conflict Zones – A Legal Distinction with Ramifications," REDRESS, Winter 2008, 12. Within the context of his work on this linguistic paradox, Benjamin Lawrence has suggested, for example, that we adopt the terminology of "spousal or marriage simulacrum." (Permission from author to cite his article under review entitled "Asylum and the "Forced Marriage" Paradox: Petitions, Translation, and Courts as Institutional Perpetrators of Gender Violence."

¹⁰⁶ Azra, *Interview by Author, Digital Recording*, (19 November, 2011).

¹⁰⁷ Sabita, *Interview by Author, Digital Recording*, (29 November, 2011).

¹⁰⁸ Tracy, *Interview by Author, Digital Recording*, (21 September, 2011).

what provides the context and conditions for forced marriages to take place, wherein abuses largely against women and girls go unchallenged. Forced marriage project coordinator, Shirley Gillett, emphasizes that forced marriage “happens in all patriarchal societies,” including “women born here, who have come from around the world, in all religions and in non-religious families.”¹⁰⁹ A huge diversity of cultures thus share this patriarchal reality in common. As I argue in this study, forced marriage is a symptom of patriarchy, which is deeply pervasive and tied to power, control, dominance and violence. Gillett adds that “there’s not an awareness of your human rights. At all. Or women’s rights either.”¹¹⁰

Consider a few examples from respondents that illustrate the state of confusion and contradiction about one’s legal, theoretical and rhetorical rights in marriage vis-à-vis the law vs. ability/agency in reality to exercise them within patriarchal cultures.

According to one Sikh lawyer,

Everyone has got crazy ideas about laws. [...] Some of the stuff is just completely made up. In my community, I actually think it’s some kind of agenda. There are all these loud-mouth old women who think they are these matriarchs within the patriarchal system who run around saying a lot of things that are actually very harmful to women. And they are misleading and I wonder, where is the agenda? I mean *you’re not educated; you have not had a career. What makes you think YOU know the law?* But they *do think* they know the law and they go around telling other women that, *forcefully. They don’t know anything.*¹¹¹

¹⁰⁹ Shirley, *Interview by Author*, 10 August, 2011).

¹¹⁰ *Ibid.*

¹¹¹ Navdip, *Interview by Author*, 5 August, 2011. The italics and capital letters represent emphasis placed on words by the respondent.

Navdip's oral testimonial highlights how women are part of the patriarchal structure. As she notes, matriarchs in positions of power over younger women spread misinformation about laws in relation to marriage. In exercising their power for this purpose, women work for the maintenance of patriarchy.

For Sandeep, heeding the patriarchal pressure and going through with a forced marriage "is what you're expected to do, there are no options" and "the only law that exists is that of the father in the house."¹¹² Case lawyer Deepa Mattoo has seen several dozen cases of forced marriage per year. Often, the persons in marriages without legal consent that have entered her office have not perceived what they have experienced as violence: "I've heard clients tell me: it might be odd for you, but it's not odd for me, because I've seen all my sisters, all my cousins, all my family members and community members go through this the same way."¹¹³ In other cases, persons in forced marriage situations have thought they will gain more control or power over their lives when fleeing other abusive situations, only to be "completely taken aback by what happens to them and how basically their controller just changes hands from parents (or brothers and parent) to husband and his parents."¹¹⁴ Referring to the United States' and Canada's blindness to the human rights abuses experienced by young FLDS Mormon girls who have been married and impregnated by men in their forties and fifties before they are of legal age to consent to sex or marriage, Daphne Bramham asks "How is it that nations, so clear-sighted in recognizing human rights atrocities in other countries...have been so

¹¹² Sandeep, *Interview by Author*. 14 November, 2011.

¹¹³ Deepa Mattoo, *Interview by Author*, 11 August, 2010.

¹¹⁴ *Ibid.*

blind to the human rights violations committed against their own women and children?”¹¹⁵ This question applies to cases of forced marriage in Bountiful British Columbia that are explored in more detail later in the dissertation, and to the many forms of involuntary marriage in this study that have been ignored by the Canadian state. It deserves a comprehensive answer.

This chapter has sought to illuminate some of the deeply complex factors at play surrounding the law and understandings of the law in relation to forced marriages in Canada from 1948 to 2008. In doing so, it has emphasized the diverse range of cases, and the challenges in splitting arranged, forced and servile marriages, especially in relation to consent. It has highlighted the disconnect between international and domestic law, and stressed the substantive limitations of the law, both domestically and internationally. Through analysis of written sources and findings from interviews of survivors, community members, researchers and experienced front-line service providers, this chapter has stressed the complexities at play that are far greater than those grasped within the law. It has underscored the potential advantages and current limitations of a human trafficking lens, TIP laws and the Palermo Protocol, provided examples of the confusion surrounding human rights as they relate to marriage, and explained why the impulse to criminal prosecution can be misguided. Confusion surrounding human rights and marriage laws, combined with reluctance on the part of individuals in forced marriage situations to press charges against their loved ones because of very real institutional, community and family dynamics at play, concerns of potential re-victimization, stigma,

¹¹⁵ Bramham, *The Secret Lives of Saints*, 8.

and harm to their children in forced marriage cases make any criminal prosecution of the perpetrators of forced marriages a very delicate decision. In light of this, in spite of the Canadian government's decision to criminalize forced marriage (that ignored and went against many consultations with experts and service providers), for the time being my answer to the question "to criminalize or not to criminalize" is *not yet*. In place of this, we must first ask another question: *how*? How could we criminalize forced marriage with reforms to *Bill S-7* (or without it) that address the fundamental concerns and constraints to consent raised in this chapter, or use existing laws to combat the practice?

Awareness and understanding of forced marriage cases experienced by Sandeep and other Canadians from 1948 to 2008 is growing. As it increases, the number of cases reported and found in written sources is likely to rise. The chapters that follow historicize forced marriage and trace how attitudes, public discourse, terms and the law have changed during this sixty year period. As we further investigate the nature, use-value, strengths and limitations of Canadian legal instruments and provisions in cases of forced marriage, the heated debate will persist: *to criminalize or not to criminalize?*

Chapter III: “For Better or For Worse?”: Delving beneath the rhetoric of a past filled with “good, consensual marriages” (1948-1968)¹

Questions surrounding the validity of a marriage and consent to marry have marked Canada since Confederation. In Canada, as elsewhere, the requirement for consent in marriage came, by necessity, before the legal category for lack of consent was created. As noted in the introduction, the story in this thesis picks up when consent was already a requisite element of marriage and forced marriages were deemed unacceptable. However, as with most profoundly complex institutions and phenomenon over time and space, we must look at breaking points as well as the overlaps, transformations and continuities. This chapter does just that. It focuses on the awareness and regulation (or lack thereof) of non-consensual marriage situations leading up to and following 1948, when Canada signed the Universal Declaration of Human Rights (UDHR), the first international consensus document recognizing (under Article 16:2) that “Marriage shall be entered into only with the free and full consent of the intending parties.”² It ends in 1968, in the midst of the National Divorce Act, which, while keeping “fault” as grounds for divorce, broadened the grounds for divorce and simplified the procedure for obtaining a divorce. These measures ushered in significant changes (albeit with their limitations as compared to 1986) for persons in forced marriage situations, who, until 1968, by and

¹ This subtitle was inspired by the quote “the invention of a past filled with good marriages” in Amy Kaler’s article “‘Many Divorces and Many Spinsters’: Marriage as an Invented Tradition in Southern Malawi, 1946-1999,” *Journal of Family History* 26 (2001), 547-548.

² See UN GAOR, 3d Sess. at art. 16.1 and 16.2, U.N. Doc. A/RES/217A(111) (1948).

large were compelled by economic and social injustices to remain in marriages against their will.³

Historicizing valid and consensual marriages

On July 9, 1867, a mere eight days after Confederation, the case of *Connolly v. Woolrich*⁴ went before the courts. In a controversial decision in favour of the part Cree plaintiff, Justice Monk of the Superior Court of Quebec upheld the validity of a customary marriage under Cree law which took place in the Athabaska District (now Manitoba) in 1803. William Connolly, having left Montreal in 1802 at the age of 16, was living and working in Rivière-aux-rats in the Athabaska District. With the consent of Suzanne Pas-de-nom and her father, he and Suzanne entered a traditional Cree marriage through a Cree marriage ceremony. They went on to have at least six children, and lived together from 1803 to 1831, at which time Connolly was a chief trader of the Hudson Bay Company. However, after 28 years of marriage, when he, Suzanne and some of their children moved to Montreal in 1831, Connolly married another woman under Quebec civil law: Julia Woolrich. In the court battle that ensued between Suzanne and Julia's children over Connolly's property after his death, Justice Monk ruled in favour of

³ While the liberalization of divorce law in 1968 facilitated the process for women to formally divorce their husbands (and vice versa), it was not necessarily easier for them materially. See, for example, the case of *Murdoch v. Murdoch* [1973] S.C.J. No. 150. Irene Murdoch. Although the court heard undisputable evidence of Irene Murdoch's contributions and hard work "Haying, raking, swathing, moving, driving trucks and tractors and teams, quietening horses, taking cattle back and forth to the reserve, dehorning, vaccinating, branding" and doing "anything that was to be done", Murdoch was denied a share of the 480 acre Alberta ranch property she operated with her husband prior to their separation after 25 years of marriage. This case inspired many Canadians to demand family law reform. See *Murdoch v. Murdoch* [1973] S.C.J. No. 150; [1973] A.C.S. no 150; [1975] 1 S.C.R. 423; [1975] 1 R.C.S. 423; 41 D.L.R. (3d) 367; [1974] 1 W.W.R. 361; 13 R.F.L. 185.

⁴ (1867), 17 R.J.R.Q. 75, 1 C.N.L.C. 70 (Que.S.C.)

Suzanne's children. He did so because he recognized "the necessary elements" of validity in the community, the voluntariness, exclusivity, and permanence of their Cree marriage entered into through mutual consent.⁵ In this early case, consent of both parties was critical to establishing a legal and binding marriage.

Consider a second case in which important precedents about force and coercion are articulated. On 20 October, 1889, Judge Boyd tried the case of *Lawless v. Chamberlain* in his Ottawa court room. Sixteen year-old Sydney Cusack Lawless, the plaintiff, represented by his father, John Patrick Lawless, brought forward a case against Maud Chamberlain (Lawless), also a minor, represented by her father Richard Chamberlain, to "set aside as void" their marriage "on the ground that it was brought about by intimidation and threats, and that although a license was issued, the plaintiff was a minor and had not obtained his father's consent."⁶ The "shot-gun wedding"⁷ occurred shortly after Maud's relatives discovered she was pregnant. As Sydney Lawless explained in his evidence in chief,

⁵ *Connolly v. Woolrich* (1867), 17 R.J.R.Q. 75, 1 C.N.L.C. 70 (Sup. Ct.) [hereinafter *Connolly* cited to R.J.R.Q.], aff'd (sub. nom. *Johnstone v. Connolly*) (1869), 1 C.N.L.C. 151, 17 R.J.R.Q. 266 (Q.B.) is a landmark case. Canadian jurisprudence has since accepted the validity of native marriage by custom: see *R. v. Bear's Shin Bone* (1899), 4 Terr. L.R. 173 (N.W.T.C.A.); *Connolly v. Woolrich* (1867), 11 L.C.J. 197, 17 R.J.R.Q. 75, 1 C.N.L.C. 70 (Que.S.C.) aff'd (1869), 17 R.J.R.Q. 266, 1 C.L.N.C. 151 (Que.Q.B.); *R. v. Nan-E-Ouis-A-Ka* (1889), 1 Terr.L.R. 211, 2 C.N.L.C. 368 (N.W.T.S.C.); *R. v. Williams* (1921), 30 B.C.R. 303 (B.C.S.C.); *Re Noah Estate* (1961), 32 D.L.R.(2d) 185 (N.W.T.Terr.Ct.). Suzanne was supported by William and, after his death, by Julia, at a convent at the Red River settlement. Justice Monk's decision was upheld by the Cour du Banc de la Reine, en appel. Chief Justice Duval, Mr. Justice Caron, Mr. Justice Badgley and Mr. Justice McKay agreed with Mr. Justice Monk's reasoning, conclusion, and result. Mr. Justice Loranger dissented. See (1869), 17 R.J.R.Q. 266; 1 R.L.O.S. 253; 1 C.N.L.C. 151. Note: this case introduces questions surrounding race and forced marriage that will be explored in greater detail later in this dissertation.

⁶ *Lawless v. Chamberlain* [1889] O.J. No. 104; 18 O.R. 296 ONHCJ, para. 1

⁷ A shot-gun wedding occurs when one or both parties are forced into marriage due to an unplanned pregnancy. It does not necessarily involve a gun. However, in the case referred to above, a gun was used by the bride's family to threaten and pressure the groom.

I received a letter from the defendant the night before the marriage. ... I got a rig and drove up from Hull to Aylmer (seven miles), and got there at 8.30 p.m. I sat down with her, and her father came in. He asked me what I was going to do. I said I was going to go home. He held out a pistol, and said, 'No, you are not.' One of the Ritchies (Samuel, uncle of the defendant), came in and quieted him, and stopped his threatening. They sat down and waited for another Ritchie to come in. The second Ritchie (Thomas), asked, 'What are you going to do?' He said: 'You must either marry the girl, or you won't leave the house alive. I'll give you three minutes to make up your mind.' The father was very angry, and seemed under the influence of liquor. And he said, 'I'll blow your brains out.' I believed he was going to shoot me. They sent for a minister, Mr. Cunningham (English Church), who lives in Aylmer. He came to the house, and took out forms of license, and was going to perform the marriage. I said I was under age, and had not my father's consent, and it was at the head of a revolver. The clergyman said it was best to go and consult another minister. After debating a while, they got another minister, Mr. Service, and he advised Chamberlain not to go on with the marriage. I said there was no love in it; it was force.⁸

A Dr. Marks, the "superannuated minister of the Dominion Methodist Church" married 16-year old Sydney Lawless and Maud Chamberlain the next morning, testifying later that he "had not the slightest suspicion that the man was not a voluntary and willing party."⁹ In contrast, Lawless explained, "I thought the ceremony might be performed in the hopes that I would annul it afterwards."¹⁰ In the front matter of the Ontario High Court of Justice's ruling in the case, the Justice stresses that "Where duress is allege[d], it must be manifest that force preponderated throughout."¹¹ In his decision, Judge Boyd recognized that Lawless was a minor, and the seriousness of the pressure he endured as a result of the threats that he would be shot and killed by Chamberlain's relatives if he did not marry her. However, he felt he could not decide in Sydney Lawless's favour in regard

⁸ *Lawless v. Chamberlain* [1889], para. 24.

⁹ *Ibid.*, para. 29.

¹⁰ *Ibid.*, para. 25.

¹¹ *Ibid.*, case introduction summary.

to the marriage because of Lawless's active assistance in "forward[ing] its accomplishment".¹² Lawless participated in obtaining a marriage license, securing a minister, making an affidavit of age, and went forward with marrying Maud Chamberlain. Even though Lawless testified that he feared for his life (via shot gun), that he thought he could later have the marriage annulled, and indeed left Maud Chamberlain immediately following the ceremony because he did not wish to be married, Judge Boyd dismissed his nullity action. Lawless could not establish duress through sustained force. One wonders if perhaps this was because he was a male, and believed not to be capable of experiencing duress. Irrespective, in this case, the precedent was set that a victim of forced marriage may at no point go along with a marriage, even if threatened with death. Indeed, the onus from this early case onwards has been put on victims to prove their lack of consent, something that is often in their innermost thoughts and that cannot be ascertained beyond a doubt based only on their actions. In fact, as this case reveals, "whether the relevant duress has occurred or not is a subjective and not an objective test".¹³ In Canada, as in the United Kingdom and elsewhere, the subjective test remains "whether the duress experienced was such as to destroy the reality of consent and override the will of the petitioner".¹⁴ While Judge Boyd made a decision based on the evidence before him, it is difficult to truly ascertain Lawless's level of consent. Reflecting the patriarchal system and status of women and girls at this time in Canadian

¹² Ibid., para. 34.

¹³ See Mary Welstead, "Forced Marriage: Bifurcated Values in the UK." *Denning Law Journal* 21 (2009), 62.

¹⁴ Ibid.

history, what is perhaps most interesting in this case is the fact that Maud Chamberlain's voice is completely silenced: we do not once learn how she feels about her marriage, or, more importantly, if she consented.

Three years after *Lawless v. Chamberlain*, Canada added what appears to be its first Criminal Code provision on consent for women and girls in marriage. Article 281 of the 1892 Criminal Code reads: "Every one is guilty of an indictable offense and liable to fourteen years' imprisonment who, with intent to marry or carnally know any woman, whether married to or carnally known by any other person, takes away or detains any woman of any age against her will."¹⁵ The shift from church to state regulation of marriage (with marriage acts and case precedents being imported from the British) took place at the turn of the twentieth century.¹⁶ Scholars have traced the history of nineteenth-century Canadian marriage, and deemed marriages in the period of Canada's first consent provisions to be "pure patriarchy."¹⁷ As Constance Backhouse's research demonstrates,

¹⁵ See legal overview in Chapter II and *The Criminal Code*, 1892. Chap. 29. 55-56 Vict. V. R.S.C., c. 162, s. 48, p. 105. Sections 259 and 280 also include the following marriage provisions:

259. Every one is guilty of an indictable offense and liable to two years' imprisonment, and to be whipped, who – (a.) indecently assaults any female; or (b.) does anything to any female by her consent but for such consent would be an indecent assault, such consent being obtained by false and fraudulent representations as to the nature and quality of the act. 53 V., c. 87, s. 12

280. Every one is guilty of an indictable offense and liable to a fine, or to one year's imprisonment, who, being lawfully authorized, knowingly and wilfully solemnizes any marriage in violation of laws of the province in which the marriage is solemnized. R.S.C., c. 161, s. 3.

In addition, the "seduction" of a female under 18 "under promise of marriage" was made an offence in Canada in 1886 and amended in 1887 to apply to females under 21. Marilyn Pilon, "Canada's Legal Age of Consent," Parliament of Canada Law and Government Division, 25 January 1999, <http://www.parl.gc.ca/content/lop/researchpublications/prb993-e.htm>

¹⁶ On this shift, see Peter Ward, *Courtship, Love and Marriage in nineteenth-century English Canada* (Montreal: McGill-Queen's University Press, 1990). Ward's book explains that mutual consent was required in Catholic and Protestant marriages, and traces the important shift from church to state regulation of marriage.

¹⁷ Constance Backhouse, "Pure Patriarchy: Nineteenth-Century Canadian Marriage." 31 *McGill L. J.* 264 1985-1986.

“Canadians were proud to declare that their marriages were exceedingly strong – models of virtue and purity,” but “marriage was not the uniquely moral institution claimed by nineteenth-century rhetoric; rather, it served to bolster male supremacy in Canada”.¹⁸ Based on exhaustive archival research, Backhouse found that “judges were wedded to the notion that the ‘wellbeing of society’ ought to outweigh the protection of battered women,” and that “the proper wifely role was one of submission and obedience”.¹⁹ In spite of the courageous and determined campaigning against abuse and inequality in marriage by feminist leaders like Nellie McClung, little changed at the turn of the twentieth century.²⁰ Backhouse refers to others feminists, including Flora Macdonald Denison and Dr. Margaret Gordon, who along with Nellie McClung called for the removal of the word “obey” from marriage ceremonies. As she notes, “McClung wrote in 1915 of the “absurdity” of referring to wifely obedience in marital vows. Advocating a true companionate marriage, she urged other Canadian women to: “teach our daughters that marriage is a divine partnership based on mutual love and community of interest ... and [that] the happiest marriage is the one where the husband and wife come to regard each other as the dearest friend, the most congenial companion.”²¹ Legally speaking, Canadian women like Maud Chamberlain were not viewed as dear friends or

¹⁸ Ibid., 312 and 264. Backhouse presents two competing marriage models for this time period: the patriarchal model and the companionate model. See p. 282. To a significant degree, Canada was influenced by what was modelled in England, where companionate marriage was introduced in the eighteenth century, and the two models competed. On this, see Lawrence Stone, *The Family, Sex and Marriage in England 1500-1800* (New York: Harper & Row, 1977).

¹⁹ Backhouse, “Pure Patriarchy,” 305 and 306.

²⁰ Backhouse refers to others feminists, including Flora Macdonald Denison and Dr. Margaret Gordon, who along with Nellie McClung began called for the removal of the word “obey” from marriage ceremonies.

²¹ Backhouse, “Pure Patriarchy,” 299-300. See Nellie McClung, *In Times Like These* (Toronto: University of Toronto Press, 1972, orig. pub. 1915), 33 and 72.

companions. Under the Civil Code, wives of all classes were incapacitated in marriage, mandated to submit to their husbands (even within the context of abuse), and no jobs offered wages that would allow single women without other means of surviving, who either did not consent to marry or want to remain in their non-consensual marriages, to support themselves independently.²²

Note a third example that provides important historical context. In June 1924, a Temporary Slavery Commission was appointed by the council of the League of Nations (LON) (1924-1946), the predecessor of the UN (1946-). On August 6, 1928, Senator for Toronto, Ontario, Sir George E. Foster, Member of the King's Privy Council of Canada, indicated Canada's "definitive accession" to the 1926 Slavery Convention.²³ During the negotiations and exchanges in 1924 and 1925 of what would become the 1926 Slavery Convention, forms of forced marriage (later deemed "servile marriage" as seen in Chapter II) were discussed. It was suggested they be included in the convention, which defined slavery as "the status or condition of a person over whom any or all of the powers attaching the right of ownership are exercised".²⁴ In the end, the marriage provisions were not included in the 1926 Slavery Convention. It is important to remember that this first discussion of forced marriage provisions in relation to slavery occurred within the

²² See the excellent study by Bettina Bradbury entitled "Women at the Hustings: Gender, Citizenship and the Montreal By-Elections of 1832," in Mona Gleason and Adele Perry, *Rethinking Canada. The Promise of Women's History*, Fifth Edition, (Don Mills, Ontario: Oxford University Press, 2006), 73-94.

²³ See League of Nations, *Treaty Series*, vol. 60, p. 254.

²⁴ See Article 1:1, of "1926 Slavery Convention Signed at Geneva on 25 September 1926," July 12 2013, http://portal.unesco.org/culture/en/files/38440/12815475701Slavery_Convention_%281926%29.pdf/Slavery%2BConvention%2B%281926%29.pdf

context of a broader international anti-slavery agenda linked to colonialism.²⁵ When the members of the Temporary Slavery Commission met in 1924 and 1925, colonialism was at its heights and colonial legislation in member countries, including Canada, sought to suppress specific traditional “customs” such as those associated with marriage in “native populations”²⁶ Canadian historians have documented the significant effort it took to suppress Aboriginal marriage customs in order to establish what Sarah Carter has deemed Canada’s marriage “fortress” – the imposition of the Christian, lifelong, one man and one woman monogamous model of marriage that continues today.²⁷ As Carter states, “it took much work, and even draconian measures” to accomplish this.²⁸ Indeed, fuelled by fears that high divorce rates in the United States may catch on in Canada and changes connected to industrialization that seemed to threaten the gender order of husband as provider and family head and wife as dependent and submissive, the Canadian state apparatus went to great lengths to impose this marriage model in Mormon populations, among Doukbour peasants from southern Russia, among other newly arrived immigrants from Europe, and in diverse Aboriginal populations holding different frameworks for marriage and divorce.

²⁵ Miers, *Slavery in the Twentieth Century*, 2003. See the more detailed explanation of this in my literature review. Joel Quirk also addresses this theme in his book, *The Anti-Slavery Project*, 2011.

²⁶ Miers, 23. While outside the scope of this project, as noted by Miers and Roberts, Martin Chanock has shown that in parts of Central Africa, the greatest impact of abolition was upon marriage practices. See Miers and Roberts, eds., *The End of Slavery in Africa* (Madison: University of Wisconsin Press, 1988).

²⁷ See Sarah Carter, *The Importance of Being Monogamous: Marriage and Nation Building in Western Canada to 1915* (Edmonton: University of Alberta, 2008), 283 and Chapter 1 entitled “Creating, Challenging, Imposing and Defending the Marriage ‘Fortress,’” 1-18.

²⁸ *Ibid.*, 16-17.

Archival records reveal that prior to colonial intervention, in some Aboriginal systems of marriage, spouses were, generally speaking, more equally treated. Further, some Aboriginal marriage systems allowed for divorce and gave women more freedom to select their partners.²⁹ That said, as in other groups in Canada, forced and arranged marriages did take place in Aboriginal communities. Marion Carter of the Cree Nation on Seekaskootch Reserve explains that “Boys and girls who did not know each other were married if their parents told them to. My sister Rose had this kind of marriage. She did not love the man she was married off to and refused to sleep with him. She had her own bed and he had his own. Every time her husband looked at her should would make faces at him.”³⁰ Consider a second example. The grandparents of high profile politician and chief of Red Sucker Lake, Elijah Harper, surprised him by putting pressure on him to marry a woman they selected when he was not ready for marriage.³¹

Some arranged and forced marriages advanced trade relations. So too did consensual intermarriages that occurred between Aboriginal women and white men, like

²⁹ See Carter, *The Importance of Being Monogamous*.

³⁰ Interview with Marion Carter by Mary Mountain with Interpreter Alphonse Littlepoplar, Seekaskootch Reserve, Saskatchewan, July 30, 1974, Saskatchewan Archives Board, Tape IH-017, Transcript Disc 15 A. Interestingly, in 1974, years after Rose’s forced marriage, Carter told Mary Mountain that “today, they[Rose and her husband] get along very well.” On Cree marriage traditions in the James Bay area, see Louis Bird, “0005-Our Voices-Traditional Marriage Practices,” Transcribed by Donna Sutherland, June 2001, <http://www.ourvoices.ca/filestore/pdf/0/0/0/5/0005.pdf>. Involuntary marriage cases can be found in Aboriginal oral histories and literature. See, for example, Bruce White, “The Woman Who Married a Beaver: Trade Patterns and Gender Roles in the Ojibwa Fur Trade,” *Ethnohistory*, Vol. 46, No. 1 (Winter 1999), 109-147; and “The Weeping Pine,” in Basil H. Johnston “Is That All There Is?: Tribal Literature,” in *New Contexts of Canadian Criticism*, eds. Ajay Heble, Donna Palmateer Pennee and J.R. Struthers (Peterborough: Broadview Press, 1997), 346-354.

³¹ Despite the pressure from his grandparents, Harper did not marry this woman. See Pauline Comeau, *Elijah: No Ordinary Hero* (Douglas & McIntyre: the University of Virginia, 1993), 55.

that of William Connolly and Suzanne Pas-de-nom explored earlier in this chapter.³² However, intermarriages like theirs were perceived as “wicked” or invalid by colonial authorities. Note the language used in the 1898 circular below that was sent to “all Indian Superintendents and Agents in Ontario and Quebec” (see Figure IV on page 146). Worried about “separations between husbands and wives” and “adulterous unions” that occurred “among the Indians,” the Department’s circular asked that “every effort possible be made to put a stop to the evil,” and emphasized the need to “impress upon the Indians a proper view of the marriage relations and of the damage done not only to individuals but also to the community at large by the prevalence of immorality.”³³ As noted earlier, this alleged ‘moral,’ ‘sin-free’ model colonial authorities imposed constrained the greater freedom previously held by some Aboriginal communities.³⁴ As it was elsewhere in Canada, the patriarchal model of marriage was imposed on them. For state officials, a lot was at stake. Writing a few years earlier in 1887, Prince Edward Island politician and premier, the Honourable Robert Poore Haythorne, stressed that “the future of the country law [was] wrapt up in the sanctity of the marriage state.”³⁵

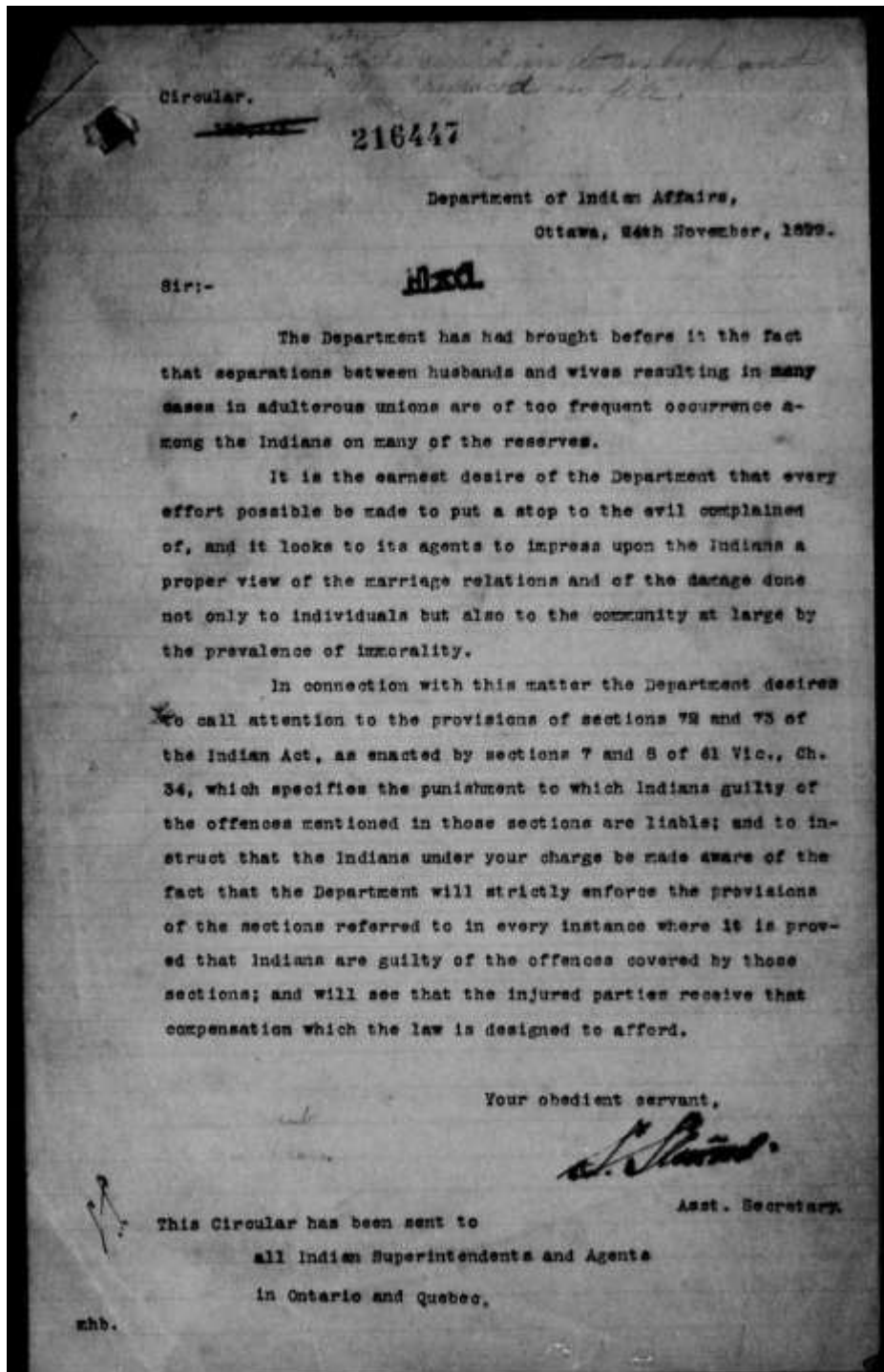
³² Sylvia Van Kirk, *Many Tender Ties: Women in Fur-Trade Society, 1670-1870* (Winnipeg, MB: Watson & Dwyer Publishing Ltd., c1980). Also see Karen Anderson. *Chain Her by One Foot: the Subjugation of native Women in Seventeenth-Century New France* (Routledge, 1991).

³³ Library and Archives Canada, “Headquarters - Ottawa - A Circular Letter to Agents of the Indian Department in Ontario and Quebec Regarding their Duty to Impress on Members the Proper View of Marriage and Damage Done by Immorality.” R216-244-6-E, 1899, Microfilm reel C-11307, *File no.* 216,447, *Volume* 2991. FIND010/36798. MIKAN no. 2070490.

³⁴ See Carter, *The Importance of Being Monogamous* and Colleen Doty, “‘For the Peace of the Community and the Good Order of Society’: Regulating Aboriginal Marriage Relations in British Columbia, 1870-1940,” Master’s Thesis, Simon Fraser University, 1994.

³⁵ Backhouse, 273. Canada, *Senate Debates* at 185-188 (1 June 1887)

Figure IV: A Circular Letter to Agents of the Indian Department in Ontario and Quebec Regarding their Duty to Impress on Members the Proper View of Marriage and Damage Done by Immorality.



Library and Archives Canada.
Headquarters - Ottawa - R216-244-6-E, 1899, Microfilm reel C-11307, File no. 216,447, Volume 2991.
FIND010/36798.
MIKAN no. 2070490.

Similarly, as Backhouse notes, Senator Richard William “insisted that even one divorce was too many: ‘granting one divorce means a multiplication of applications for divorce’, he predicted, and this would inevitably lead to the wreckage of the foundation upon which society was based.”³⁶ These examples reveal that the form and sanctity of marriage were being debated at the federal level in Canada’s highest political arena.

Prior to and after Temporary Slavery Commission (1924-1926) officials discussed what they saw as problematic “native” marriage practices, for “assimilation purposes,” the government of Canada saw no problem with forcing children at Indian Residential Schools to marry other residential school pupils they had never met. To be clear, these were forced marriages. Indeed, “beginning at the turn of the [20th] century and for several decades afterwards, Indian children who had been displaced from their homes and taken to residential schools were paired up and...sent to colonize and run European-style farms”.³⁷ This was the case at the File Hills Colony on 8,000 hectares of the Peepeekisis Reserve, an hour’s drive northeast of Regina. For instance, pupils at the Qu’appelle Industrial School and File Hills Boarding Schools (now most commonly known as Qu’appelle and File Hills Residential Schools) were forced to marry and work for an experimental colony in Saskatchewan. Consider the case of Clifford Pinay, who informed Daniel Nokusis’ father that: “I [Clifford] was only 15 or 16 years old. I was finished school. I thought I was going to go back to Sakimay he says, but he [Indian Commissioner William Morris Graham] sent me – even before I stepped out he told me I

³⁶ Ibid., Canada, *Senate Debates* at 389 and 392 (16 May 1894)

³⁷ David Roberts, “Indian students forced into marriage, farm life,” *The Globe and Mail*, Lebret, Saskatchewan, December 10, 1990.

got a woman for you to go and start farming in Peepeekisis.”³⁸ While it is difficult to determine the scale and scope of these incidents due to the classified nature and access restrictions to documents on residential schools, documents that are available include the testimonial about “Katherine Motherwell, the Presbyterian headmistress at the File Hills Boarding School, [who] worked with the Indian commissioner of the era, William Graham, to choose similarly trained couples to populate the experimental colony”.³⁹ As Roberts explains, these students “often had no choice in their own marriages, they were told by church officials whom they would marry”.⁴⁰ Oblate records from 1909 disclose that “Rev. Joseph Hugonnard, the Roman Catholic headmaster at the Qu’Appelle Industrial School in Lebret, once performed a simultaneous marriage ceremony for six Indian couples on a summer day and promptly sent them to the File Hills colony”.⁴¹ While visiting File Hills, Eleanor Brass witnessed the process unfold. As she explained in 1990 at the age of 85, “They were matched and mated up and told who they would marry....These couples didn’t even go together or know each other.”⁴²

³⁸ Indian Claims Commission. Peepeekisis First Nation Inquiry, File Hills Colony Claim. March 2004, p. 166. ICC Transcript, September 11–12, 2002 ICC Exhibit 5A, p. 303, Daniel Nokusis.

³⁹ David Roberts, “Indian students forced into marriage,” Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid. Several Aboriginal memoirs and oral history interviews on this issue exist, some of which have emerged as part of efforts of the Truth and Reconciliation Commission of Canada. My thanks to Anne Lindsay for drawing my attention to this case and other examples. As noted in the conclusion, this is an area of research I intend to pursue as a post-doctoral project. See The Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, May 31, 2015, available at http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec_Summary_2015_05_31_web_o.pdf

Other Aboriginal girls/women were coerced or “strongly encouraged” to marry white men.⁴³ Under the Indian Act, however, these women and girls lost their Indian status immediately following these marriages. Loss of status through marriage also occurred during the Residential School era.⁴⁴ As Abbott summarizes,

The residential schools policy was not the only one designed to assimilate Natives. In 1876, Canada’s amended Indian Act of 1868 drastically changed the nature of Native marriage by linking it with status. The criterion was paterilineality, which was consistent with *couverture*, the legal concept that a wife’s legal existence was merged with her breadwinner husband’s. Translated into the realm of Native marriage, this new policy meant that the Status woman, for example the Cree who married a Status Mohawk, became a Mohawk as well, but if she then divorced, not only would she lose her Mohawk status, but she would not be reinstated as Cree unless she married a Cree. The Native woman who married a non-Native man lost her tribal status, including the right to live on her reserve or own property there. ... In 1951, the Indian Act was again amended... despite decades of protests... it continued to exclude Native women married to non-Native men. They had to suffer the grief of banishment from their family home and community⁴⁵

The same colonial authorities who sought to assimilate Aboriginal women through involuntary (and voluntary) marriages to white men also imposed the marriage “fortress” on white women who made the journey from Europe. They presented the “assisted immigration” of “ordinary, working-class white women” to marry miners and farmers and perform domestic and agricultural labour as a “generic social panacea.”⁴⁶ As was the case of marriages between Aboriginal women and white men in this period, it is difficult

⁴³ Karen, *Interview by Author, Digital Recording* (1 December, 2011). Karen is Aboriginal and shared this information with me based on her understanding of what occurred to her ancestors. She saw the terms “coerced” and “strongly encouraged” to be slightly different, “strongly encouraged” not being as far down the continuum of lack of consent, but still denying full and free consent. To date, I have not been able to verify this information in secondary sources, or locate primary source examples.

⁴⁴ Karen, *Interview by Author, Digital Recording* (1 December, 2011).

⁴⁵ Abbott, *A history of marriage*, 341-342.

⁴⁶ Adele Perry, *On the Edge of Empire: Gender, Race and the Making of British Columbia, 1849-1871*, (Toronto: University of Toronto Press, 2001).

to know whether women who arrived in Canada for this purpose, or the men they married, consented to their marriages. What can be ascertained, however, is that women in this period by and large came to “respectability” in the eyes of male colonial officials by outwardly adhering to the marriage “fortress” and by virtue of their marriage status, not through their positive qualities as people or hard work, be it waged or unwaged.⁴⁷

For the League of Nations (LON) Temporary Slavery Commission formed in 1924 alluded to above, many questions arose in the early 1920s in relation to marriages, particularly “marriage customs” and “transfers” of women and girls in marriage.⁴⁸ While the thoughts of Sir George E. Foster, cabinet Minister and representative of Prime Minister McKenzie King, on the matter are not clear, many of the Temporary Slavery Commission members for whom records exist believed childhood marriage, bridewealth, widow inheritance, polygamy, and the purchasing or the transferring of women and girls in marriage seemed to constitute conditions similar to slavery. For instance, the Temporary Slavery Commission’s report of 1924 included the “Acquisition of girls by purchase disguised as payment of dowry.”⁴⁹ This fell under the provision “Practices restrictive of the liberty of the person, or tending to acquire control of the person in conditions analogous to slavery”.⁵⁰ While the Commission’s report only specified the “Acquisition of girls by purchase disguised as payment of dowry,” it added the following additional phrase: “it being understood that this does not refer to normal marriage

⁴⁷ Parr, *The Gender of Breadwinners*, 1990.

⁴⁸ Miers, *Slavery in the Twentieth Century*, 111.

⁴⁹ League of Nations, “Report of the Temporary Slavery Commission to the Council of the League of Nations.” (A.17.1924.VI.B), 1924.

⁵⁰ Ibid.

customs.”⁵¹ What is meant by “normal customs” here would seem to mean white, mainly European marriage traditions and models, not longstanding “normal” practices in other cultures, including those indigenous to Canada.

The Slavery Convention as proposed in 1925 was to include the obligation to bring “about progressively and as soon as possible the disappearance of slavery in every form, notably in the case of domestic slavery and similar conditions”.⁵² In spite of the debate to include marriages which fell under “similar conditions” to slavery in the Convention, due to pressure against doing so from a few members, the committee decided not to list the various forms of servile status and forced marriage laid out in their earlier report.⁵³ The lot of individuals in these situations, Sir Frederick Lugard of Great Britain argued, could only be ameliorated slowly by “civilization and education.”⁵⁴ Lugard and the other representatives of colonial powers presumed that servile marriages only existed in “uncivilized” populations, not among or perpetrated by “civilised” women, men and children in their home countries and communities. As Miers concludes,

⁵¹ Ibid.

⁵² League of Nations, “Annex: Draft Convention, League of Nations Official Journal (Special Supplement 33) Records of the Sixth Assembly: Text of Debates,” (26 September 1925), 439.

⁵³ The role played by the Canadian delegation is not clear. Miers, 122. See League of Nations, “Draft Convention on Slavery, Replies of Governments, Reply from the Government of Germany,” LON Doc. A.10(a).1926.VI, 22 July 1926, 4. Also see League of Nations, “Draft Convention on Slavery and Proposed Amendments,” LON Doc. A.VI/S.C.1/1, 10 September 1926; as found in Folder R.77.D.46781 entitled Draft Convention on Slavery: Discussion at the 7th Assembly, 1926.

⁵⁴ League of Nations, “Minutes of the Temporary Slavery Commission,” LON C.428.M.157.1925.VI, 54-55.

they therefore “had no desire to interfere with marriage customs.”⁵⁵ As a result, no action was taken at this time.

Over the course of the twentieth century, forced marriage would be condemned as a violation against human rights, and again be considered through the lens of slavery within colonial discourses. Once again, “abnormal marriage customs” in “native populations” (as opposed to “civilized” countries except where “natives” reside in them) would re-emerge as the focus of the international community and Canadian officials. This was the case following the 1948 UDHR leading up to Canada’s ratification of the 1956 Supplementary Convention.

“No action is required”: forced marriage as merely a “native” issue

In 1948, Canadian officials approved and signed the UDHR, the first international consensus document recognizing (under Article 16:2) that “Marriage shall be entered into only with the free and full consent of the intending parties.”⁵⁶ While the UDHR, as an international consensus document was not binding, eight years later, on 7 September, 1956, they signed a convention that was: the *Supplementary Convention on the Abolition of Slavery, and the Slave Trade, and Institutions and Practices Similar to Slavery*.⁵⁷

Canadian officials thus began to study what, if any, legislation would be required for the

⁵⁵ Miers, *Slavery in the Twentieth Century*, 435. The extent to which Canada was spoken for by Britain and/or envisioned as being in need of civilization and education is not clear. Similarly, it’s not clear if Canada was distinguished from other British colonies.

⁵⁶ See UN GAOR, 3d Sess. at art. 16.1 and 16.2, U.N. Doc. A/RES/217A(111) (1948).

⁵⁷ For a summary of the discussion leading up the drafting of the 1956 Supplementary Convention, see Miers, 362-363.

ratification of the convention.⁵⁸ Under the Supplementary Convention, it was clear that they would be obliged to “take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of ... institutions and practices...covered by the definition of slavery contained in article 1”.⁵⁹ As noted in Chapter II, Article I prohibits

(c) any institution or practice whereby:

- (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or
- (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
- (iii) A woman on the death of her husband is liable to be inherited by another person;

(d) any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.⁶⁰

Writing about the Convention in his letter to Frederick Percy Varcoe, Deputy Minister of the Department of Justice, Marcel Cadieux, the representative of the Under-Secretary of State for External Affairs (now Foreign Affairs), noted that Varcoe’s letter of August 25, 1956 “stated that the institutions and practices set out in Article 1 were not known to exist in Canada”.⁶¹ Cadieux went on to write that “Assuming the practice in Article 1(c) not to

⁵⁸ See letter from Marcel Cadieux, representative of the Under-Secretary of State for External Affairs, to the Deputy Minister, Department of Transport and Deputy Minister, Department of Citizenship and Immigration, Ottawa, March 18, 1957, File No. 4575-EC040, National Archives.

⁵⁹ See Marcel Cadieux, United Nations Economic & Social Council [ECOSOC], Conference of Plenipotentiaries on a Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, *Final Act and Supplementary Convention*, art. 1, U.N. Doc. E/CONF.24/23 (Sept. 7, 1956).

⁶⁰ Ibid.

⁶¹ Marcel Cadieux, representative of the Under-Secretary of State for External Affairs, to the Deputy Minister, Department of Transport and Deputy Minister, Department of Citizenship and Immigration, Ottawa, March 18, 1957, File No. 4575-EC040, National Archives. pages 2-3 of 3.

exist in Canada, I consider that no action is required”.⁶² Having fleetingly addressed the issue of servile forms of marriage in Canada, Cadieux took it for granted not to be an issue of any concern. He was nonchalant about the possible existence of this form of enslavement, as defined by the convention, or its potential impact on Canadians. On behalf of his office led by Lester B. Pearson, he wrote at much greater length to Varcoe about potential issues connected to Article 4, which called for measures to be taken by Canadian merchant and naval vessels.

The response Cadieux received to his letter is also telling. Jean Boucher, Director of Technical Services, confirmed that Article 4 raised what he deemed a “substantiated difficulty, inasmuch as it seems to carry with it the right to claim asylum for slaves having taken refuge on board a vessel of a state party to this Convention”⁶³ While his department was not prepared to consider this issue, asking that it be postponed until July⁶⁴, Boucher was given clearance to speak at length to article 1(c). In doing so, he stated that

it would not be quite correct to assume that practices referred to in Article 1(c) of the Convention are unknown among Canadian aborigines, either Indian or Eskimo. Marriages are still being arranged by parents and exceptionally, there might still be shamanistic practices by which wives would be taken away from their husbands and transferred to others. Similarly, although sororate (by which a widower would marry his sister-in-law) is not institutionalized, it is not uncommon to find levirate (by which a man takes charge of his widowed sister-in-law). However, all these practices can hardly be any longer regarded as prevalent institutions. The notion of highest bidder is certainly not an essential feature of

⁶² Ibid., page 3 of 3.

⁶³ Jean Boucher, for the Under-Secretary of State for External Affairs, Ottawa, “Attention: Mr. Marcel Cadieux, Re: Supplementary International Convention on Slavery,” Ottawa, April 8, 1957, page 1 of 2.

⁶⁴ Ibid.

bargains, which are made mostly to better ensure survival of the individuals in the community. Besides, although these things do happen, it cannot be said that they are forced upon the individuals concerned, as the latter generally remain free to choose an alternative course, whenever one is in sight. Finally, one must bear in mind that the law of the land would not condone any such practice if in fact it implied marital association against the consent of either one of the parties.⁶⁵

Boucher's letter – which failed to refer to *any* evidentiary basis or investigation that led to his conclusions – is revealing on a number of levels. On one hand, it exposes the ignorance/ambivalence of the Canadian government with respect to a series of current cases that met the definition of “servile marriage” and went well beyond the Aboriginal or “shamanistic” groups listed by Boucher. The forced marriages of Canadians from a diversity of communities in this same period, including the Mormon community, persons with disabilities, victims in the Mennonite community, the Italian-Canadian community, South Asian community and beyond (some of which are explored below) were either intentionally disregarded, or perhaps completely overlooked. On the other hand, Boucher's letter is an example of the longstanding xenophobia, discrimination and “othering” of persons of Aboriginal descent.

Existing analysis in Canada has repeatedly presumed a connection between forced marriages and specific racialized communities without strong empirical data or evidence. A higher number of cases have been profiled from First Nations, immigrant, and typically Muslim, Arab and/or African communities, but these same communities have often received this attention within colonial, anti-immigrant and Islamophobic discourses/agendas. As such, while it seems possible, even likely in some cases, that

⁶⁵ Ibid.

there may have been a higher number of cases in these sub-groups, we cannot assume this is the case without further research. It is possible that we are merely more aware of these cases. Grounded in empirical-based evidence, this dissertation argues for addressing the cross-cultural, transnational, macro-level causes that unite cases of forced marriage affecting men, women and children of many ages, ethnicities, and cultures. Respondents interviewed from the diverse ethnicities (noted in Chapter I) identified cases in mainstream white Canadian communities, racialised groups and other, more fundamentalist communities, including the FLDS and Lev Tahor in Chapters IV and V. Early analyses on forced marriage have not included this broad range of communities. As a result, they have masked an important connection and reality that holds in all of the cases of forced marriage identified in this study – that, notwithstanding differences and variation in scale and scope per community, the practice of forced marriage is based on the convergence of power, control and dominance. This macro-level commonality is at the root of the illegal practice of forced marriage. A central thrust of this chapter and thesis is the recognition (as can be seen through cases involving men and women of African, European, North American, South American, Middle Eastern and Asian diasporic communities in Canada) that the convergence of power, control and dominance that allows for forced marriage situations to arise is generally more present in communities where individuals have a higher degree of vulnerability due to their young age, isolation and community-specific pressures, but can arise and take place irrespective of a person's race, culture, gender and religious background.

The National Film Board of Canada's 1953 documentary *Angotee – A Story of an Eskimo Boy*, exemplifies the type of reporting and the 'othering' tendency that fed the erroneous assumption held by Canadians like Boucher in the 1950s that forced marriage was a marginal, only "native" issue.⁶⁶ In this documentary case study, Canadians were informed of child marriages in the Eskimo culture. Set in the Chesterfield area of the Hudson Bay, the narrator of the film charts the life of Angotee (little man), son of Atutu and Kunac, who is betrothed at birth. We learn that his older sister, Kona, is "soon to be married" at the age of fifteen. The parents of his future wife, Shuktina, "are old friends of Kunac who spoke for her on behalf of Angotee when she was born."⁶⁷ It is not clear whether Kona, Shuktina and Angotee, or their parents, were ever given the opportunity to consent to their marriages. Their lack of option to say "no," hence lack of consent, is presumed by the filmmaker(s). Although the narrator mentions that as Angotee's grandmother, Atutu is the leading authority, ascribing to her a position of power in their family and community, Shuktina and the other women in the documentary are portrayed as subordinate and completely dependent on men. The narrator states, "A son will be the most important member of the family when he grows up: the hunter and provider. Girls are treated with kindness, but the boy in the family will always be the favourite. Sisters are rarely jealous of this."⁶⁸ Similarly, we learn that Shuktina "must learn the tasks of women and be able to do them well if she is to be a good wife and mother."⁶⁹ These

⁶⁶ See Douglas Wilkinson, *Angotee – A Story of an Eskimo Boy*, National Film Board of Canada: Ottawa McMill, 1953, 29 minutes 56 seconds.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

blanket statements are made without any apparent consultation of leading Eskimo historians or community members. The language used to describe Shuktina and Angotee's wedding is also problematic:

In the dawn of the eighteenth year since the day of his birth, Angotee the man takes Shuktina as his wife. In this land, a man must marry. In this land, no man must live alone. And so the girl, whose future has been linked with his since the day of her birth, is now the wife of Angotee. From now on their destinies are one.⁷⁰

It leaves the audience with the impression that Angotee, now "his own master," had the choice to marry, and romanticizes a marriage that we do not know was forced or not, for either party.

Perhaps Boucher had a misinformed understanding of Eskimo and other Aboriginal marriage customs in mind in 1957. Or, perhaps he simply could not imagine or chose not to acknowledge that forced marriages were taking place in diverse communities across Canada, and were perpetrated by government and religious authorities in the case of Indian Residential School pupils. In any case, he concluded his response to Cadieux by stating that, "although the practices referred to in Article 1(c) cannot be said to be unknown in Canada, they are carried out under such conditions as would seem to constitute no problem for the ratification by Canada of the proposed Convention."⁷¹ The Pascuzzi case below, like others gleaned from the archival record and shared by respondents, suggests this to have been an incorrect, dangerous conclusion.

⁷⁰ Wilkinson, *Angotee*, 1953.

⁷¹ Jean Boucher, for the Under-Secretary of State for External Affairs, Ottawa, "Attention: Mr. Marcel Cadieux, Re: Supplementary International Convention on Slavery," Ottawa, April 8, 1957, page 1 of 2.

While the ratification itself was unproblematic, the assumption that forced marriage was not an issue to be examined or taken seriously in order to uphold the Convention left many Canadians unprotected and vulnerable prior to and long after Canada's ratification of the Convention on 10 January, 1963. From a legal point of view, the conditions in which these non-consensual marriages came about, had they been recognized, would have constituted a problem for ratification. Recall that Canadian authorities committed to "take **all** practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of"⁷² the practices and institutions listed in Article 1. Instead, as we have seen, they erroneously assumed and concluded forced marriage was merely a "native" issue.

Challenging the idyllic picture: rape, duress, parental pressure and greed

The cases of forced marriage that follow are a testament to the blindness of Canadian officials on the issue of forced marriage in non-"native" communities. Consider first Midred Pascuzzi's case. On the 27th of February 1954, Mildred filed an action against the man she was allegedly married to, accusing him of duress, and of coercing her into their marriage. As the record states, "On or about the 8th of February 1954, [she] left her home at Welland with the intention of visiting an aunt in the City of Toronto."⁷³ Pascuzzi accompanied her, and "prevailed upon her to accompany him to a Toronto hotel...where intercourse took place".⁷⁴ Mildred was fifteen years old, and the court

⁷² Cadieux, *Final Act and Supplementary Convention*, 1956.

⁷³ *Pascuzzi v. Pascuzzi* [1955] O.J. No. 278; 1 R.F.L. (Rep.) 262 Citation, Para. 2

⁷⁴ *Ibid.*

records state that “complaints” were brought forward to the police. It is not clear who brought forward these complaints, but one can deduce that the word “complaints” used here likely alludes to rape.

While it is not certain that Mildred accused Pascuzzi of raping her, we know for certain that they were both detained, she for a charge of “juvenile delinquency,” and he under an unspecified criminal charge. A few days later, Mildred’s father passed away after a heart attack. Her family blamed his death on the stress of “his daughter’s actions”.⁷⁵ A devastated Mildred (who was obviously not responsible for her father’s death) was then told by the Pascuzzi family that “if she and the defendant were married, no criminal charges would be laid.”⁷⁶ Although her mother did not initially agree to this, refusing it as an option, she later changed her mind. Her change of heart occurred after a visit from the Pascuzzi family’s solicitor. Shortly thereafter, without her consent, Mildred’s marriage was set for 27 February, 1954. By then, she had been forced to leave her home, and was residing with the parents of her “husband-to-be.” Writing about the difficult position and evident biases at play for her future in-laws, who were doubling as her hosts, Judge Aylen noted,

I do not think they were unkind to the plaintiff but, in view of the criminal charge facing their son, they perhaps, not unnaturally, tried in every way short of physical violence to induce the plaintiff to marry their son. ... there is no doubt that the plaintiff was not only reluctant to go through a form of marriage but, on more than one occasion, protested that she would not do so. No doubt, with the best intentions in the world, those to whom the plaintiff turned for advice all urged her so strongly to marry the defendant that it became practically an impossibility for a child

⁷⁵ Ibid.

⁷⁶ Ibid.

of her age to continue to refuse, especially as her only home at the time was with the defendant's parents.⁷⁷

In his ruling in favour of Mildred, Judge Aylen declared her marriage to be "a nullity," and cited important considerations related to duress brought to his attention by Mildred's lawyer, W.J. Marrs. The following excerpt is noteworthy:

if influence is carried to such an extent as to in reality amount to duress, the aggrieved person could not have been acting as a free agent and no true consent could have been given. Duress implies the exertion of force which induces fear but does not necessarily mean physical force, for a course of conduct may amount to duress even though no physical power is exerted.⁷⁸

Judge Aylen's reference to this passage is significant, for, as noted earlier but not taken into account in many cases of forced marriage, duress can be physical, emotional or a combination of the two.

Some of the individuals who experienced forced marriage and were interviewed for this study outwardly went along with their marriages, even reciting marital vows, when they did not consent to them inwardly.⁷⁹ Their testimonies explaining why they did so, corroborate Judge Aylen's point about the considerable impact of physical and, perhaps most significant, non-physical duress.⁸⁰ As R.R. Evans has noted, "[t]here may be threats unfulfilled, or menacing or terrorizing acts or words or conduct so affecting the will of another as to induce through fear or apprehension a state of mind precluding the possibility of the importuned person acting as a free agent or offering resistance to

⁷⁷ Ibid.

⁷⁸ Aylen stated "I have found no better or more comprehensive statement of the law" in reference to R.R. Evans' "The Law and Practice Relating to Divorce" quoted in Ibid., para. 4.

⁷⁹ This makes it difficult to establish duress, but is a significant issue to consider, illustrating the complexities at play in potential cases of forced marriage.

⁸⁰ This includes the power of the fear induced in them by threats of physical violence to them or others.

coercion or threats.”⁸¹ Thus, it is important to recognize that while “The legal conception of duress is clear and well-defined; the difficulty comes from its application to the facts [and complexities] of each individual case.”⁸² In relation to this challenge, Evans’s nuanced summary of the role of fear in cases of forced marriage is helpful:

Fear is a necessary ingredient but it need not be fear of some danger or injury or calamity to the person coerced, but is sufficient if fear for some other person is created. In addition there must exist in the party coerced an unwillingness despite apparent consent.... The age, strength of character, impressionable nature, mental capacity and the relations of the person influenced with those who attempted the coercion must be taken into consideration and measured as well as the qualities and capacity for influencing and importuning possessed by the person or persons charged with having exerted the baneful influence.⁸³

Like Mildred’s case, the cases below are significant, for they each reveal different factors connected to the establishment of duress, and the importance of evaluating each particular case based on its unique, particular circumstances.

20 year olds Neil Stanley Hunt and Jeanette May Lewtas of Ontario married in Duluth, Minnesota, on January 28, 1957.⁸⁴ In *Hunt v. Hunt* they both “gave evidence and stated that after the marriage they spent their honeymoon in Winnipeg where the marriage was consummated.”⁸⁵ Although the pair was content with their marriage and neither opposed it, Neil Hunt’s parents were not happy. His parents succeeded in getting the marriage voided by Judge Ferguson on the basis that Neil never got their consent. Judge Ferguson of the Ontario High Court found that Neil violated “The law of

⁸¹ Ibid, para 4, referring to Evans, page 133.

⁸² Ibid. See chapter two in which I delve more thoroughly into the issue of legal consent.

⁸³ Ibid., para 4, referring to Evans, page 133.

⁸⁴ *Hunt v. Hunt*, (1958), 14 D.L.R. (2d) 243 (Ont. H.C.)

⁸⁵ Ibid., para. 5

Minnesota [that] requires the production of the consent of the groom's parents in cases where he is under twenty-one years of age, as one of the preliminaries to the issue of the licence".⁸⁶ While Jeanette, also a Canadian citizen and resident of Ontario, was of the same age as Neil, it appears that her parents did not oppose the match. Through Judge Ferguson's ruling, Neil Hunt's parents succeeded in ending what, by all accounts, seems to have been a consensual marriage, revealing the power and influence held by parents with the legal ability to ignore their son's wishes and end his consensual marriage for unclear motivations.

Conversely, in *Singh v. Kaur*, we learn of a father of a sixteen year old male teen who exercised his power and influence to do all he could to pressure his son to marry. He pre-arranged for his son to marry a young woman when he travelled with him abroad in the "East Punjab" in 1949.⁸⁷ Ten years later, details of the marriage emerged when his son asked to have his marriage annulled on the ground of duress. As the court transcript notes, Singh's "father told his son that the marriage had been already arranged and that if the ceremony did not proceed, that he would be disgraced in the eyes of his village."⁸⁸ Based on the court transcript, we know that Singh "admitted that he knew that he was about to go through a form of marriage and that he understood the obligations and the privileges entailed in marriage," but did not feel able to say no because he was abroad.⁸⁹ Judge Maclean notes that "He did say, however, that if the father had attempted to induce

⁸⁶ Ibid., para. 2. Judge Fergusson established that "Consent must be considered as part of the form of marriage, and the forms of entering into a contract of marriage are to be regulated by the *lex loci contractus*". See *The Canadian Encyclopedic Digest*, vol. 27, p. 132.

⁸⁷ *Singh (Banga) v. Kaur*, (1959), 29 W.W.R. 95, 1959 CarswellBC 71 (B.C. S.C.)

⁸⁸ Ibid., para. 2.

⁸⁹ Ibid., para. 3.

him to marry while they were living in British Columbia, he would have run away, but being in East Punjab at the time, he had no place to go and very little knowledge of the local language.”⁹⁰ In spite of his acknowledgement of the real fear and pressure Singh experienced, Judge Maclean dismissed Singh’s petition, stating “I cannot help but think that the present allegations of duress would have had more force if the petitioner had refused to have intercourse with his wife or if these proceedings had been commenced some five years ago when the petitioner became 21 years of age.”⁹¹ Although Judge Maclean acknowledged Singh’s father “may have exercised persuasion,” he stated “I am not convinced that the marriage was induced by duress ... the onus of proof is upon the petitioner and I do not think he has discharged that onus.”⁹² One wonders if Singh would have succeeded in discharging the onus of proof had he made his petition five years earlier, or if he had been a female since the possibility of duress among males threatens the fabric of patriarchy. It likely did not help his case that he filed his petition in April 1958, three months after the birth of his daughter, at which time he and Kaur had been separated since 1957.⁹³ Nevertheless, his case serves as a reminder that both men and women can be victims of “ills” in marriage.

Additionally, this case is another example of the silencing of female voices. We learn that “after the marriage was performed, [Singh] entered into marital relations with his bride, who was apparently about the same age as himself.”⁹⁴ However, we get very

⁹⁰ Ibid., para 4.

⁹¹ Ibid.

⁹² Ibid., para. 5.

⁹³ Ibid., para. 3.

⁹⁴ Ibid.

little information about “his bride” who was married as a teenager at “apparently about the same age” as Singh.⁹⁵ Here again, like the case involving Maud Chamberlain, the female’s voice is silenced. Perhaps reflecting the “pure patriarchy” of the time, we get no indication as to Kaur’s status or ability to consent.

Moving from parental influence and pressure in alleged forced marriage cases to other motivations and forms of duress, consider *Capon v. McLay*. In this example, greed comes to the surface as the possible motive for an alleged forced marriage.⁹⁶ Together, the plaintiffs, John Murray Capon’s mother, Carmon E. Capon, and sister, Nancy Jane O’Brien, accused Mary Matkowsky of taking advantage of John Murray when he was of unsound mind. On June 29, 1957, a marriage ceremony in Toronto legally bound Capon and Matkowsky together as husband and wife. They lived together in Toronto until July 22, 1958 when “at the insistence of his wife he was committed to the Ontario Mental Hospital”⁹⁷. By July 1959, Matkowsky had moved to the state of Nevada. A few months later, Capon was officially declared “mentally incompetent”.⁹⁸ At the time of his death, a short time after Matkowsky had committed him to the hospital in Ontario, she was remarried and living with an American husband in Nevada. However, Matkowsky claimed that “her status in Ontario was as the wife and now as the widow of the late John Murray Capon.”⁹⁹ While this would be bigamy (for she would be married to two men at

⁹⁵ Ibid.

⁹⁶ *Capon v. McLay* [1965] O.J. No. 684; [1965] 2 O.R. 83; 49 D.L.R. (2d) 675

⁹⁷ Ibid, para. 4.

⁹⁸ Ibid.

⁹⁹ Ibid., para. 3.

once), she knew this would make her Capon's next-of-kin and the inheritor of the major part of his estate.

In contrast to Matkowsky's claim, in his last will and testament, dated March 14, 1952, Capon left his estate to be divided equally between his mother and sister. The court record indicates that Carmon Capon and Nancy Jane O'Brien "contended that a marriage to a person of unsound mind who was incapable of understanding the nature of the contract into which he was entering and its consequential obligations was...not merely voidable, but that such a contract was absolutely null and void ab initio to all intents and purposes."¹⁰⁰ The judge therefore ruled in their favour, annulling the marriage and denying Matkowsky's claim to the major portion of Capon's estate, citing her "startling inconsistency" in claiming to be his wife after filing to annul their marriage in Nevada so she could remarry prior to his death.¹⁰¹ Capon's ability to understand the nature of the marriage contract he entered with Matkowsky was also put into question. Indeed, his ability to understand and consent was significantly diminished, making him more vulnerable to the likely economically motivated intentions of Matkowsky.

The complexities at play when an individual's mental capacity to understand and consent to a marriage is diminished are important to consider. Preliminary research reveals that persons with disabilities are more at-risk of being forced to marry.¹⁰² Generally speaking, "the mental capacity required for a valid contract marriage is the

¹⁰⁰ Ibid., para. 11.

¹⁰¹ Ibid., para. 33.

¹⁰² See Welstead, "Forced Marriage: Bifurcated Values in the UK," (2009), 61 on these important complexities at play.

capacity to understand the nature of the contract and the duties and responsibilities which it creates.¹⁰³ At times this can become confusing in alleged forced marriage cases.¹⁰⁴

In *Webb v. Webb*, the issue was again whether one of the parties to a marriage was capable of understanding the nature of the marriage contract they entered into under Canadian law. Paul Webb was 22 years old on the day of his wedding to 16 year-old Lynn Webb (born Gammon) on May 20, 1966. As the court record reveals, however, Paul Webb “had been a patient at the Nova Scotia Hospital in Dartmouth, Nova Scotia, off and on, for the preceding five years”.¹⁰⁵ Doctors suspected he had schizophrenia or a personality disorder. His prior suicide attempts and erratic behaviour were well documented. On Valentine’s Day 1968, Lynn, at 17 years old, asked that their marriage be annulled. Her petition to the Judge of the Halifax County Court was premised on the alleged fact that Webb was insane at the time of their marriage.¹⁰⁶ A number of officials provided detailed testimonials about both Paul and Lynn. Based on Father Theriault’s testimonial, it is clear that Lynn had been a patient in the same hospital as Paul and had gotten pregnant after they slept together. Theriault had serious doubts as to whether Webb “could give valid consent” and doubted his general “ability to enter marriage”¹⁰⁷. Lynn testified that she had “wanted to wait” to get married. Further, “one of the priests

¹⁰³ *The Canadian Encyclopedic Digest* – leading cases on marriage – Vol. 27 and Guide, 138-139. iv). Mental capacity. 58.

¹⁰⁴ See, for example, *Re SA United Kingdom* case study of an eighteen year-old deaf and mute woman at risk of forced marriage. Mary Welstead, “Vulnerable adults: the inherent jurisdiction and the right to marry. (United Kingdom).” *Denning Law Journal* 19 (2007): 259-269. On mental capacity to marry, see *Deal v. Deal* [1966] N.S.J. No. 25 60 D.L.R. (2d) 411 Nova Scotia Supreme Court, and *Reynolds v. Reynolds* [1966] B.C.J. No. 21 58 W.W.R. 87 British Columbia Supreme Court.

¹⁰⁵ *Webb v. Webb*, [1968] N.S.J. No. 36 3 D.L.R. (3d) 100 Nova Scotia Court for Divorce and Matrimonial Causes Cowan, C.J.T.D Judgment: December 18, 1968, paras. 10 and 11.

¹⁰⁶ *Ibid.*, para. 1.

¹⁰⁷ *Ibid.*, para. 29 and 31.

had told them to wait until after the baby was born, and she wanted to do that.”¹⁰⁸

However, Webb told Lynn “it would not be fair to the unborn child.”¹⁰⁹ According to the record, Lynn then “kind of agreed, in a way, to the marriage.”¹¹⁰ Curiously, there is no mention or analysis of this less than convincing description of her consent at the age of 16, two years below the legal age of consent. Indeed, Lynn’s inability to legally consent at the time of the marriage is never brought up as an issue of concern. In the end, the judge stated that “the parties should never have married, having regard to their mental condition,” but found that Webb, unlike Lynn, was sufficiently “mentally capable of appreciating the nature of the contract of marriage”.¹¹¹ Lynn’s request for an annulment was declined. One wonders if she filed her petition as a result of her dissatisfaction at having merely “agreed, in a way” to the marriage. To be sure, she was clearly faced with pressure by Webb to go along with it, and she was a minor even when the Court for Divorce and Matrimonial Causes in Nova Scotia made its ruling in 1968, shortly after a major turning point for Canadians seeking to get out of marriages: the *1967-1968 Divorce Act*, which as Chapter IV stresses, put Canada’s “marriage fortress” into question.

From the Bedrooms of the Nation to the Marriages of the Nation

As Divorce laws in Canada were in the process of being reformed, former Prime Minister Pierre Trudeau who was then Minister of Justice made what is perhaps his most

¹⁰⁸ Ibid., para. 35.

¹⁰⁹ Ibid., para. 35.

¹¹⁰ Ibid.

¹¹¹ Ibid., para. 42. The couple had a daughter in December 1966, and separated in September 1967, at which time their daughter was taken into custody of the Children’s Aid Society to be put up for adoption.

famous statement: “There’s no place for the state in the bedrooms of the nation.”¹¹² He did so within the context of the Omnibus Bill, which passed two years later and included the decriminalization of contraception and the legalization of abortion with approval of a three-doctor panel.¹¹³ As Daphne Bramham explains,

Most people have forgotten that he said it during debates over a massive and controversial rewriting of the Criminal Code [sic] that decriminalized “homosexual acts.” A few years later, his government again stepped back from the private realm of sexual relations and legalized abortion. Finally Trudeau tried – with the Charter of Rights and Freedoms – to create a freer society where all men, women and children would have more choices open to them. Yet now Canadians – already burdened with the national characteristic of politeness – often repeat Trudeau’s quote to justify not poking into other people’s bedrooms even if it means ignoring abuse.¹¹⁴

As we will see, from the late 1960s onwards, more and more Canadians, with vocal feminists at the forefront, put pressure on the state to make bedrooms and marriages of the nation, especially abuses and ills like duress, coercion and absence of consent, its business.

This chapter has sought to delve beneath the rhetoric and “invention of a past filled with good, consensual marriages” in Canada.¹¹⁵ As we have seen, since Confederation in 1876, ills in marriages, including the forced marriage examples in this chapter, have challenged the idyllic narrative of strong, blissful marriages painted by Canadian authorities. The latter have struggled to determine under what circumstances

¹¹² "Omnibus Bill: 'There's no place for the state in the bedrooms of the nation'". *CBC News*. Toronto: CBC Digital Archives. 1967-12-21. Archived from the original on 2012-08-12. Retrieved 2012-08-12. <http://www.cbc.ca/archives/categories/politics/rights-freedoms/trudeaus-omnibus-bill-challenging-canadian-taboos/theres-no-place-for-the-state-in-the-bedrooms-of-the-nation.html>

¹¹³ Criminal Law Amendment Act, 1968-69 (S.C. 1968-69, c. 38).

¹¹⁴ Bramham, *The Secret Lives of Saints*, 2008, 10-11.

¹¹⁵ Kaler, “Many Divorces and Many Spinsters,” (2001), 547-548.

marriages could be deemed valid and consensual. Further, since as early as the Temporary Slavery Commission, authorities have discussed and grappled with how to handle forced marriage cases that border on the lines of slavery as well as those that do not. As can be seen in the jurisprudence examples in this chapter from 1876 to the UDHR in 1948 and following, clearly defined legal precedents for determining what constitutes elements of a forced marriage (i.e. lack of consent, coercion and duress) were established. However, during this period and afterwards, complexities of human behaviour have repeatedly revealed the inherent challenges in applying black and white legal concepts to cases in which human dynamics are not clear cut. In tracing the awareness and regulation of non-consensual marriage situations of Canadians, this chapter has also underscored ways in which government officials have denied or been unaware of the existence of forced marriages in Canada, or erroneously alleged that forced marriages only took place in “native” communities deemed “uncivilized” and in need of assimilation. The cases above prove otherwise – that, without question, forced marriages were taking place in various communities across the country between 1948 and the 1967-1968 divorce law reforms, the latter occurring within the broader context of laws and discussions on civil rights and freedoms. As a result of a range of risk factors, including young and old age, difficult family situations, violence, disabilities, pressure, greed and colonialism, Canadians in forced marriage situations in this chapter were more vulnerable to the confluence of power, control and dominance exercised by those who perpetrated their forced marriages. These perpetrators ranged from loved ones, to community members, to strangers, to state officials. As a whole, in attempting to impose their “idyllic” yet

problematic model of marriage, state officials who ratified successive international conventions and consensus documents with provisions to combat and end forced marriage situations simultaneously perpetrated forced marriages between Indian Residential School pupils. As we will see in Chapter IV, after the 1968 Divorce Act, silencing minority voices and those of prominent feminists advocating for the largest group of individuals disadvantaged by marriage in general and at-risk of being forced to marry in particular – that is, women and girls – would prove to be less difficult.

Chapter IV: “The State has Business in the Marriages of the Nation” (1968-1986)¹

On October 1, 1941, 17 year-old Anna Mae Wynder was assigned to marry Joseph Ray Blackmore. Years later in a letter to one of her grandchildren, she wrote, “I was 17-and-a-half and believe me, I was too young.”² Almost 30 years after Wynder’s marriage, on June 6, 1971, 15 year-old Debbie Palmer was assigned to marry the same man: Ray Blackmore. She too was below the legal age of consent to marry.³ By then, Blackmore, one of the leaders of the Fundamentalist Church of Jesus Christ of Latter-Day Saints (FLDS Church) in Bountiful, British Columbia, was 55 years old and had four other wives. When Palmer was widowed at 18 years old after Blackmore’s death, Prophet Leroy Johnson commanded her father to give her in marriage to Charles Quinton. Her second “placement marriage” was marked by repeated, violent abuse and her multiple suicide attempts.⁴

Born and raised over 3700 km away from Bountiful, British Columbia, Carol Christie, a native of Northern Ontario, was also forced to become a polygamous wife, in this case in the colony belonging to the Mormon Church of Jesus Christ (Restored) near the city of Owen Sound, Ontario. Christie has written an entire chapter about the “Shock

¹ Shoshannah, *Interview by Author. Digital Recording*. (San Diego State University, California, United States, December 5 2011).

² Quoted in Bramham, *The Secret Lives of Saints*, 2009, 68.

³ Age of consent to marry varies per province and territory in Canada. It is 18 years old in Alberta, Manitoba, New Brunswick, Ontario, Prince Edward Island, Quebec and Saskatchewan. It is 19 years old in Nova Scotia, North West Territories, Nunavut and Yukon. See Esther L. Lenkinski, *Halsbury’s Laws of Canada*, “Family” Volume, First Edition, (LexisNexis Inc., 2010), 132.

⁴ See Debbie Palmer and Dave Perrin, *Keep Sweet: Children of Polygamy* (Dave’s Press, 2004.)

and Horror” she experienced during her forced marriage to Stan King, “the Prophet” of the community in 1970 when she was 18 years old. As she recounts,

“The Prophet wants you to be his wife,” my mother told me. The words didn’t hit me right away. I thought I must have misunderstood. “You must mean that He wants me to marry one of His sons,” came my reply. “No, He wants you to be His wife!” “But He’s already married.” “Yes, but as Prophet of our church, He is entitled to more than one wife. And He has chosen you.” “He’s twice my age.” “No matter. This is God’s calling for you.” “God’s calling? What about my own dreams? To become a nurse. To meet someone, to fall in love?” “We all have the weakness of self-will. Often it contradicts God’s intentions. God has spoken to our Prophet. And He is calling you to be His wife. You should feel honored.” I didn’t feel the least bit honoured. I felt shaken and physically sick. ... But my life as a teenager was so tightly controlled, mostly by my mother and increasingly by this church, that I felt I had no choice. ... In due course, my mother and I found ourselves at the church farm, ostensibly for the Prophet and I to “get to know one another better.” This visit was different from the others I’d had in the past, because now I was aware of his “intentions.” The atmosphere for me in that living room was very tense, and I became dizzy and nauseous. “Just take her to lie down in the bedroom,” he said. I went, lay on the bed, and began to gag. ... Not long after, the Prophet requested that I quit my job with a nursing home, and move to the farm with his family. As a mere girl, I was being asked to abandon people, pastimes and work that I loved. I no longer had any control over my life — and it would be years before I got it back.⁵

Christie’s memoir reveals brutal abuse and violence. She provides evidence that one of King’s other “wives” was 14 years old, and that he raped girls who were as young as 10 years old. When King died, Christie was forced into a marriage with Frank King, the youngest legally recognized son of Stan King, and endured many additional years of

⁵ Carol Christie, *Property: The True Story of a Polygamous Church Wife* (Dundurn Press: 2013), 37-40. Carol Christie was born December 18, 1952, and forced to marry Stan King in 1970.

brutal abuse as the “property” of the male leaders of the colony of the Mormon Church of Jesus Christ (Restored) before her escape in 2009.⁶

Building on earlier chapters, this chapter continues to put Canada under the microscope to expose its history of forced marriage, complicate the narrative of erasure on forced marriage, and challenge the simplistic construction of consent to marriage based merely on legal requirements. In what follows, it is clear that forced marriage is a deeply messy and complex phenomenon, grounded in the operation of power that unequally affects women and girls, does not have a simple or short history, nor is it only the purview of Aboriginal, immigrant and Muslim communities. Relying on additional legal cases, archival documents, first-hand testimonies, examples and secondary sources, this chapter explores the history of forced marriage in Canada between 1968 and 1986, a time when Canadians increasingly challenged the state to make marriages of the nation its business.

It has five main objectives. The first objective is to outline the changes for persons in forced marriage situations as a result of new divorce laws, and concerns raised by the *Royal Commission on the Status of Women* from 1967 to 1970 that led to policy changes. The second section of this chapter outlines the ideas articulated by feminist activists in Canada in this period who linked marriage to slavery, and identified forced

⁶ See “The Prophet: Allegations of polygamy, abuse and psychological torture within secretive sect,” CTV W5, CTV News Online, November 12, 2012, <http://www.ctvnews.ca/w5/allegations-of-polygamy-abuse-and-psychological-torture-within-secretive-sect-1.1041913>

marriage as a form of patriarchy.⁷ The work and writing by feminists in this period illuminate the ways in which individuals entered, stayed and exited forced marriage situations. Additionally, their opposition to marriage reveals the limitations and the unequal nature of the institution of marriage itself, which has been used as a vehicle for the perpetration of violence and control by individuals in positions of power over others. The gendered nature of this movement against inequalities in marriage which was led, by and large, by women resembles the gendered nature of forced marriage, which, to date, has disproportionately impacted women and girls. The third objective of this chapter is to examine the intersection of polygamy and forced marriage, the former being a practice the Canadian state has sought to curtail often without addressing concomitant forced marriage situations. Through a case study of the polygamous FLDS Church in Bountiful, which has received the most attention as a community in which polygamy is practiced, and a few African and South Asian Canadian community examples, this section outlines the rejection by these communities of the alleged justification of these practices through religious defences. It also highlights racialized ways in which the issue of forced marriage has been addressed, and issues that have arisen as a result of this. Fourthly, this chapter traces the higher rate of individuals seeking divorces and separations within forced marriage situations and the decline in the percentage of women (and men) willing to marry both in situations with and without consent in this period. From running away in order to avoid marriages, to not wishing “to obey and submit” within their marriages, to

⁷ While all forced marriage cases do not constitute slavery, recall that cases that fall under the definition of a servile marriage do indeed meet the threshold of slavery as defined in the 1956 Supplementary Convention.

delaying getting married, to speaking out and rejecting marriage all together, women (and men) in the 1970s and 1980s increasingly spoke out against forced marriage and made the decision not to marry. It is worth investigating how and why this was the case. Lastly, this chapter traces the changes for persons in (or at risk of being in) forced marriage situations ushered in by the 1985-1986 Divorce Law.

Canada's Marriage "Fortress" Put into Question

In the midst of the 1960s, what marriage scholar Elizabeth Abbott has deemed "The Changing Times," government authorities could no longer deny the mounting evidence contradicting their longstanding narrative of idyllic, strong marriages. Aided by public pressure, the Canadian state, through then Minister of Justice Pierre Trudeau, introduced a new Divorce Bill that made it more possible for women and men in forced marriage situations to seek divorces. The 1968 Divorce Act "removed the adversarial character of divorce and added permanent marriage breakdown as grounds for seeking it. ... The act also ended the double standard that had made it much harder for women to initiate divorce proceedings."⁸ As a result, from July 11, 1968 onwards, divorce became a more feasible option for Canadians, including individuals in forced marriage situations –

⁸ Abbott, *A History of Marriage*, 365. Divorce scholar Aysan Sev'er notes that "Prior to 1968, the law with respect to marriage dissolution supported the ideal of indissolubility of marriage, or divorce only in cases of assignment of "fault," such as adultery or physical cruelty. In the 1968 Act, however, a "marriage break-down" clause was introduced. This included addiction to alcohol, separation, desertion, and a catch-all category called "other" as allowed grounds. These additions reflected a first, albeit rudimentary, move toward reducing attribution of blame and provide a shift away from punishing the offender. However, the 1968 Act still remained conservative. For those who wanted to avoid the stigma of the marital offense grounds, it set the "length of separation" and "desertion" as legal bases for divorce at three and five years respectively, forcing individuals to ensure a long waiting period before obtaining a divorce." See *Women and Divorce in Canada*, 1982, p. 111.

their lack of consent certainly being a precipitating or contributing factor to divorce. It was now possible to get a divorce once evidence was established demonstrating the irreversible breakdown of the marriage, separate living arrangements for a minimum of three years, or desertion for a minimum of five years. However, the Act came short of its goals. Dismayed Members of Parliament “found that not only had the then minister of justice not gone as far as we wanted, but he and his officials had not even gone as far as the committee [that met between 1965 and 1966] had recommended”.⁹ Speaking to Parliament on March 1, 1977, MP Simma Holt of Vancouver-Kingsway argued that

our matrimonial laws must have been written by self-serving men...Laws with regard to matrimonial affairs are obsolete...Our matrimonial laws are simplistic: they are black and white. They must be black and white because people in courts do not seem to be able to think in any other way. It must either be black-white, right or wrong, angel or devil, but no gray or shaded area. That is too subtle for some adjudicators to understand.¹⁰

Holt, who contended that “there is no preparation for the most important duty a human is to ever undertake – marriage” argued that “the state should be active, rather than in intervention in the breakup of marriages, in helping people to prepare for marriage and to succeed in marriage”.¹¹ Citing news about “the battered woman and child”, Holt noted that “No person should...have to prove no fault to escape from such a horrible situation. Cruelty, a ground in law, should be accepted as absolute in such cases”.¹² Nevertheless,

⁹ Library of Parliament, House of Commons Debates, 30th Parliament, 2nd Session, vol. 4, 1142, debates_HOC3002_04, C, p. 3543.

¹⁰ Ibid., p. 3541-3542.

¹¹ Ibid., p. 3540.

¹² Ibid., p. 3541.

in the 1970s she and others thought that women were “economically freer to escape the bondage of a bad marriage”.¹³

While the liberalization of divorce laws in 1968 facilitated the process for women in forced and non-forced marriage situations to formally divorce their husbands, it was not necessarily easier for them materially. As noted earlier in this study, Salomé witnessed multiple forced marriage situations in her family. “There was *never* a divorce in my family until me. *Ever*. There’s no way that you could leave a marriage,”¹⁴ she explains. Citing the forced marriage of her great aunt as an example, she stresses that in spite of this new divorce legislation in 1968, her aunt could not leave: “My Uncle, he had all the money. There was no way she could leave. She basically, when she tells you her story, had no mom, no dad, nobody. She just had him. He did whatever he wanted, used to beat her all the time. She had no option.”¹⁵ Marriage scholar Elizabeth Abbott explains that

it took the shocking case of an Alberta farm wife to galvanize public opinion about the inequities of women in divorce cases. In 1968, rancher Alex Murdoch socked his wife, Irene, in the face and shattered her jaw in three places, causing permanent damage. He drove her to the local hospital’s emergency department and left her there. Irene returned home with her jaw wired and discovered that Alex had locked her out of the house and blocked her credit at local stores. In 1973, the Supreme Court of Canada ruled that Irene Murdoch’s twenty-five years’ of farm work was merely “the work done by any ranch wife” and she had no claim to half the property Alex Murdoch sold for \$95,000.¹⁶

¹³ Ibid., p. 3542.

¹⁴ Salomé, *Interview by Author. Digital Recording*. (Starbucks, Pickering, December 4, 2011).

¹⁵ Ibid.

¹⁶ Abbott, 366. Also see Robert Remington, “Celebrating a Reluctant Feminist Heroine,” *National Post*, April 6, 2000, www.fact.on.ca/news/news0004/np00040m.htm

Public outcry ensued following this Supreme Court decision and Irene Murdoch, with the support of feminists across the country, launched a counter-petition for divorce. In the end, the court ordered Alex Murdoch, whose assets were estimated to be \$200,000, to pay Irene a lump sum of \$65,000.¹⁷ This case inspired many Canadians to demand family law reform, culminating in changes to be examined within the context of forced marriage situations later in this chapter.

In spite of its limitations, particularly with respect to the division of matrimonial property, divorce rates in Canada rose dramatically following the new divorce bill. Approximately, 38,116 petitions for divorce were filed in 1968 alone. This increase from 11,165 in 1967 seems to reflect both the new, more liberal laws, and the “backlog” of cases under the older laws.¹⁸ Divorce expert Anne-Marie Ambert has found that “divorce is often the cause of women’s liberation rather than the result.... female emancipation facilitates divorce for women... In the past, more women than men remained in unhappy marriages (or were willing to do so) because they had no other choice.”¹⁹ After 1968, the divorce rate “more than doubled in 1969, and again doubled by 1974.”²⁰

Within this context, the Royal Commission on the Status of Women was created. In 1967 its mandate was to “inquire into and report upon the status of women in Canada, and to recommend what steps might be taken by the federal government to ensure for

¹⁷ See *Murdoch v. Murdoch* [1973] S.C.J. No. 150; [1973] A.C.S. no 150; [1975] 1 S.C.R. 423; [1975] 1 R.C.S. 423; 41 D.L.R. (3d) 367; [1974] 1 W.W.R. 361; 13 R.F.L. 185.

¹⁸ *Royal Commission on the Status of Women*, article 120, p. 256.

¹⁹ Anne-Marie Ambert, *Divorce in Canada*. Canadian Social Problem Series (Don Mills: Academic Press Canada, 1980), 64.

²⁰ Aysan Sev'er, *Women and Divorce in Canada*, 1982, p. 81.

women equal opportunities with men in all aspects of Canadian society.”²¹ As part of its report tabled in Parliament on December 7, 1970, the Commission took on inequalities in marriage, marriage property and divorce laws, and feminist concerns which drew parallels between the institution of marriage and slavery.²² As such, the report is an important source, for it contains competing perspectives on the realities and issues for married women in this period. Indeed, the authors of the report cite the research of family sociologists who state what appears to have been a commonly held view at this time: that the “choice of a mate is more voluntary” than in the past.²³ That said, while acknowledging this apparent increase in choice, the authors of the report also explain that “Recently, the Women’s Liberation Movement, the New Feminists and other similar groups have been insisting that women have been wrongfully exploited throughout history, that only a revolution will right the position of women, that marriage as we have known, it is a contract of slavery for women.”²⁴ They go on to add that during public hearings, “Most of the representations to the Commission made it clear that women accept their role in the family group. But many wives are now demanding that this role be that of an equal partner entitled to participate in setting policy and making decisions for the family.”²⁵ The Commission presented some of the “thinking” of these feminists, who deemed both forced marriages and legally “consensual” marriages to be slavery for women, but did not take a stand as to whether or not they agreed with them. On the

²¹ Status of Women Canada, “Royal Commission on the Status of Women in Canada,” <http://www.swc-cfc.gc.ca/rc-cr/roycom/index-eng.html>

²² Ibid., pp. 225-260.

²³ *The Royal Commission on the Status of Women*, p. 225.

²⁴ Ibid., p. 226.

²⁵ Ibid., article 18, p. 229.

whole, they found that changes were “needed in the laws governing marriage; the mutual obligations of husband and wife, and the dissolution of marriage through divorce”²⁶.

In particular, the Commission called for a raise in the minimal age of marriage. Based on statistics for 1968 and that period, they declared early marriage to be “a fact”.²⁷ Citing Article 2 of the 1962 *United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*, which Canada had not ratified (and still has yet to ratify ostensibly due to federal and provincial jurisdiction complexities), the Commission felt that “In Canada, where there are many cultures and a wide variety of customs among people living in the various regions, it is difficult to choose a specific age as being the right age of capacity to marry”²⁸, but that “It may be argued the State should protect very young persons from early marriage.”²⁹ While this language is far from strongly or convincingly in favour of the argument for state responsibility in protecting young people like Wynder, Palmer and Christie from early, illegal marriages in which they could not consent, the Commission formally recommended that the federal government of Canada change the minimum age of marriage to 18 years old and to 16 years old with parental consent.³⁰ It stressed that minimum age of marriage has differed in Canada per province:

The provinces have legislated on the question of minimum age for marriage in their respective Marriage Acts. [As of January 1970], [w]ith parental consent, the minimum legal age is 16 in 5 provinces: British

²⁶ Ibid., article 21, p. 230.

²⁷ Ibid., article 34, p. 230.

²⁸ Ibid., article 32, p. 232.

²⁹ Ibid. As the Commission explained, “At Common Law, a valid marriage could be contracted if the female has reached the age of 12 years and the male 14.” See footnote 6, p. 231.

³⁰ Ibid., articles 38-39, p. 234.

Columbia, Alberta, Manitoba, Nova Scotia and Prince Edward Island. It is 15 in Saskatchewan, the Yukon and Northwest Territories and 14 in Ontario. The Quebec Civil Code prescribes 12 for females and 14 for males. Two provinces, New Brunswick and Newfoundland, have no minimum age requirements. The legal age without parental consent is either 18 (three provinces) or 21 (six provinces and the two territories) with the exception of Prince Edward Island where it is 18 for females and 21 for males.³¹

Seeking to prevent cases like the shot-gun wedding of Sydney Cusack Lawless and Maud Chamberlain explored earlier in this dissertation, the Commission was adamant about another issue: pregnancy and age of consent in marriage. It argued that pregnancy “should not be a cause for dispensing with the provision of the law regarding age and consent” of 18.³² It also sought to protect women in vulnerable socio-economic situations.³³ Recall that although Melanie, the young Mennonite woman forced into a marriage at 18 years old, worked, she stayed in her forced marriage situation for years because she feared losing custody of her daughter were she to flee, or not have the economic means to provide for her. On this issue, the Commission formally recommended that “provinces and territories amend their legislation so that a woman, on marriage, may retain her domicile or, subsequently, acquire a new domicile, independent of that of her husband.”³⁴ It also suggested that all provinces and territories “amend their law in order to recognize the concept of equal partnership in marriage so that the contribution of each spouse to the marriage partnership may be acknowledged and that, upon the dissolution of the marriage, each will have a right to an equal share in the assets

³¹ Ibid., articles 27-28, p. 231.

³² Ibid., article 35, p. 233.

³³ See F.F. Furstenberg Jr., “Premarital Pregnancy and Marital Instability,” *Journal of Social Issues*, 32, 1976, p. 67.

³⁴ Ibid., article 53, p. 237.

accumulated during marriage”.³⁵ Lastly, it sought to ensure that family courts were established in order to ensure alimony and maintenance payments were made. These recommendations and changes to laws across the country occurred as prominent feminists increasingly advocated for more rights for women and, like the authors of the Commission, linked not just forced marriages, but all marriages to slavery and fundamental inequalities between men and women. As argued in the introduction, the institution of marriage is itself flawed, for it lends itself to forced marriage and inequalities irrespective of progressive laws, rhetoric, theoretical rights and the passing of time.

Marriage – Who Needs It?: Forced marriage, slavery and patriarchy

John Stuart Mill, deploring the status of married women in 1869, said “Marriage is the only actual bondage known to our law. There remain no legal slaves, except the mistress of every house.”³⁶ There are striking, arguably inescapable, historical parallels in the institutions of slavery and marriage:

Slaves were forcibly taken from their homes, deliberately separated from relatives and friends and bought and sold on the auction block. Slaves were kept in chains as were women unwilling to marry.³⁷ Slaves were branded for identification as women were mutilated to hinder their escape. The law gave the masters complete rights over slaves and women including the freedom to beat their “property” even unto death. ...In both marriage and slavery, persons were deprived of their own names and

³⁵ Ibid., article 89, p. 246.

³⁶ *The Subjugation of Women*, 2d ed. 1869, 147. Note: slavery was not abolished in Cuba until 1886 and Brazil until 1888.

³⁷ Dianne Post, “Why Marriage Should be Abolished,” *Women’s Rights Law Reporter* Vol. 18, Number 3, Spring 1997, 289. Post’s conclusion here is based on findings in William Goodell, *The American Slave Code in Theory and Practice* (1968), Henry Wilson, *History of the Rise and Fall of the Slave Power* (1872), and Babcock et al, *Sex Discrimination and the Law* (1979).

given names by their masters. In both marriage and slavery, persons were deprived of national self-identification because their masters' nationality was imputed to them. Children produced in marriage and slavery belonged solely to the master. In neither marriage nor slavery, were persons paid for the work they did....Under previous laws, neither slaves nor women could go to school or vote. Neither could bring cases in court nor testify against the master. Neither could own property or control their bodies....If either slaves or women tried to flee this intolerable state, both were hunted down and forced to return.³⁸

General Recommendation 21 of the *Convention on the Elimination of All Forms of Discrimination against Women* of 1979 states that "A woman's right to choose a spouse and enter freely into marriage is central to her life and her dignity and equality as a human being."³⁹ In the 1970s and early 1980s, feminists were deeply frustrated by inequalities and the lack of dignity for women and girls in forced marriage situations. According to Adden, a Pakistani-Canadian community member and witness to forced marriages, a general opinion among men in her community even after the feminist movement in the 1970s was that "A woman's body is a man's body. It's his property, that sick mind, that idea that she is *my* possession. That's what they do, that's why they get really young girls married off ... They think it's their job, that they were given birth just to be married off to this man and give him kids."⁴⁰

Concerned by this inequality and significant unequal power dynamic, in January of 1978, University of Toronto Faculty of Law Students Alison M. Fraser and Margaret E. McCallum published a manuscript for law schools across the province of Ontario.

³⁸ Post, "Why Marriage Should be Abolished," 289. Post draws attention to troubling roots of marriage traditions that continue today.

³⁹ Canada ratified the 1979 *Convention* on 9 January 1982.

⁴⁰ Adden. *Interview by Author. Digital Recording*. (York University Village, Toronto, October 11, 2012).

Entitled “Marriage: Who Needs It?”, they opened with the following controversial quote written by T.I-Grace Atkinson in *Amazon Odyssey*:

Marriage, if one examines the laws which define it, is as much if not more in the interests of men than slavery was in the interests of the master. And yet, the aims of the [Women’s Liberation] Movement are to get rid of the abuses within marriage, equalize the roles when the essential nature of these roles is to be contrasting? Could you maintain slavery if you “equalized” the roles of master-slave to master-master?⁴¹

During the same generation as Rubin and Brownmiller’s writings (mentioned in the introduction), these law students, like Rubin and Brownmiller, concluded that marriage was a chief vehicle for harming and oppressing women and girls. Like other feminists of this time period, their comparisons between marriage and slavery focus, by and large, on patriarchy, not on race.⁴² For instance, Fraser and McCallum are critical of the 1978 Family Law Act and question “whether the institution of marriage can ever be altered to end the oppression of women”.⁴³ In a section devoted to this theme, they conclude that “If we confine this question to the historical period in which we live, by adding the qualifying phrase “marriage within a capitalist state”, the answer is an unequivocal no.”⁴⁴ For them and other “radical” feminists of the 1970s, pre-conditions in the world were such that women did not have the ability to exercise full and free consent. Indeed, “Because it is taken for granted at the birth of a girl-child that she will become a wife, we have taken great pains to prepare her for that end. She has had to learn to please men in

⁴¹ Alison M. Fraser and Margaret E. McCallum, “Marriage: Who Needs It,” *Women and the Law*, Professor Huxter, University of Toronto, January 1978.

⁴² They do not single out specific ethnicities, races or communities. Their target is men (and to a lesser extent women) of the world who benefit from patriarchy.

⁴³ *Ibid.*, “Marriage: Who Needs It,” 1.

⁴⁴ *Ibid.*

order to be chosen to be a wife. Whatever men wanted she has had to become – sweet, compliant, complaisant, self-abnegating, subordinate, and, of course, as pretty and sexually attractive as possible.”⁴⁵ Of further concern, they and others increasingly recognized that women themselves act as power brokers for men in perpetuating patriarchy through forced marriages that harm women and girls. As domestic violence sector expert and former rape crisis centre Executive Director Rita Kohli explains, women “become agents of the men....It gives them a semblance of power. The goodies they receive are privileges. In doing the men’s bidding there is also the ramification that if they don’t, they will be killed. So they’ve cut a deal.”⁴⁶

“Better Dead than Unwed”

Prior to (and after) the women’s liberation movement in Canada, many single women had limited, often undesirable options if they did not wed. One marriage scholar notes that “The urgency of becoming a wife has been highlighted by the fact that there have been few times in history where there has been any place for large numbers of women without men – except in convents, brothels or in the homes of others as put-upon dependents.”⁴⁷ As a result of the structuring of many social activities on a married couple basis, unmarried women (and men) have also been left out of social life participation. In spite of these realities, “it has taken a lot of processing and “psychological work” to make women eager accepters of the status of wife. The glorification of marriage has had to be

⁴⁵ Jessie Bernard, “Introduction,” in Jane Roberts Chapman and Margaret Gates, Eds., *Women into Wives: the legal and economic impact of marriage* (Beverly Hills: Sage Publications, 1977), 10.

⁴⁶ Rita Kohli, *Interview by Author. Digital Recording*. (Etobicoke, October 7 2012).

⁴⁷ Bernard, *Women into Wives*, 10.

built into our society.”⁴⁸ Drea, like Anna Mae Wynder, Debbie Palmer and Carol Christie, was raised in the fundamentalist Mormon community. As a child, she emphasizes that: “I thought it was an expectation to be complete. Like, religious-wise, society-wise, you had to be married and have children to be an adult.”⁴⁹ After leaving her community and getting a divorce, being a wife does not appeal to her even if her single status makes her different from other Mormon women and vulnerable to rejection from her friends who still live in the FLDS community, some of whom were married as young as 12 years old. Marriage scholar Jessie Bernard notes that

To transform women into wives, it has been necessary not only to glorify the status of the wife (despite its actual disabilities) but also to denigrate the status of non-wife mercilessly. The spinster or old maid has been an object of derision. “Better dead than unwed” was the way the young women of the liberation movement put it in the late 1960s.⁵⁰

In spite of the risk of social ostracism and death threats, Carol Christie, like Drea and Debbie Palmer, is an ex-member of a Fundamentalist Mormon community. She fled her forced husband and the Jesus Christ Restored Church in Chatsworth Township near Owen Sound, Ontario. Beginning after her forced marriage to leader Stanley King in 1970 and subsequent non-consensual, abusive marriages, Christie was told and feared that “anyone who defected from the church would be captured and killed.”⁵¹ The excerpts of Wynder, Palmer and Christie’s testimonies at the beginning of this chapter highlighted

⁴⁸ Ibid., 11.

⁴⁹ Drea, *Interview by Author. Digital Recording*. (British Columbia, September 1 2011).

⁵⁰ Bernard, *Women into Wives*, 11.

⁵¹ Jake Edmiston, “Ontario church leader arrested on more than 20 charges in 16-month probe of alleged violence, polygamy,” *National Post*, April 13, 2014: <http://news.nationalpost.com/2014/04/13/ontario-church-leader-arrested-on-more-than-20-charges-in-16-month-probe-of-alleged-violence-polygamy/>

the intersection of polygamy and forced marriage situations in fundamentalist Mormon communities in Canada. Since its establishment in Canada, the FLDS Church in Bountiful, British Columbia has received the most attention as a community in which polygamy is practiced. As such, it provides an excellent case study of the intersection of polygamy and forced marriage.

“Canada’s Dirty Secret”: Polygamy *and* Forced Marriage

In her comprehensive book-long study of child brides, lost boys and the founding of Bountiful, Daphne Bramham describes the FLDS community as “Canada’s dirty secret for more than 60 years”⁵². Established in 1946 in Lister about a ten-minute drive from the town of Creston, British Columbia, polygamy was practiced in Bountiful despite its illegality under the Canadian Criminal Code. In 1947, concerned members of the public called for action by the government to curtail polygamy being practiced. However, Gordon Wismer, the Attorney General of the time, “refused to do anything,” and “was supported by the Vancouver Sun newspaper, which said in an editorial, “If they wish to behave like cattle, it is probably their own affair.””⁵³ The lack of state intervention in Bountiful, like the history of the provision against polygamy in Canada and its relationship to forced marriages in the FLDS community is curious. The polygamy provision was originally drafted in 1892 to target Mormons, and “a central rationale for eradicating polygamy was that women [would be] saved from lives of slavery”.⁵⁴

⁵² Bramham, *The Secret Lives of Saints*, 9.

⁵³ Bramham, *The Secret Lives of Saints*, 66.

⁵⁴ Craig Jones, citing Sarah Carter, p. 177.

However, during the following 100 years, the only man convicted under the polygamy provision in the Criminal Code was Aboriginal.⁵⁵ Further, despite evidence of polygamy in Bountiful since 1946, in recent years, as we will see later in this chapter, “public pressure to prosecute is mostly directed at religious minorities [and immigrants], including Muslims.”⁵⁶ Here, there is an important race component. We cannot ignore that the FLDS are white. Recall that until the 1990s, the only clearly polygamous case prosecuted by the government of Canada was that of an Aboriginal man named Bear Shin Bone who married two women.

Although charges were not laid against FLDS in the late 1940s in Bountiful, in 1953 they were laid against their counterparts in Short Creek, Arizona. As a result of the charges in the United States, an RCMP investigation was conducted in Bountiful. Surprisingly, in 1953, “a special detail of the RCMP who [had] spent considerable time investigating rumours, direct and indirect relative to polygamy and malpractices, reported nothing substantial in their investigations”.⁵⁷ Even odder, in 1954, the “passage referring to Mormon plural marriage” was removed when the Criminal Code was amended.⁵⁸ According to recent research submitted by the Attorney General of British Columbia, “At least one historian reports that this was at the lobbying of the LDS church through Alberta Mormon leaders John Horne Blackmore and Solon Earl Lowe (both Mormon men were Social Credit Members of Parliament from Southern Alberta), but details of

⁵⁵ See *R v. Bear's Shin Bone*, 1899 CarswellNWT 32, 4 Terr. L.R.

⁵⁶ Susan G. Drummond, “Polygamy’s Inscrutable Mischief,” *Osgoode Hall Law Journal*, 2009, p. 329. 173, 3 C.C.C. 329.

⁵⁷ Bramham, 79.

⁵⁸ Criminal Code, S.C. 1953-54, c. 51, s. 243. See “Closing Submission of the Attorney General of British Columbia”, March 9, 2011, p. 7.

their efforts are not known.”⁵⁹ The removal of Mormon plural marriage from the Criminal Code in 1954 notwithstanding, polygamy involving young girls – and therefore forced marriages under Canadian law since legal consent was not possible – were practiced in Bountiful. In the early 1960s, Charles Quinton, a friend of Rae Blackmore’s (to whom Debbie Palmer would later be assigned in marriage), married a second wife. Fearing charges, “The marriage was so secret that not even Quinton’s first wife knew about it.”⁶⁰

A few years later, then 13-year old Debbie Oler (now Palmer), met her step-grandfather Ray Blackmore, the prophet she would be assigned to marry two years later in 1971 at 15 years old. Based on interviews with Palmer, Bramham concludes as follows:

having been routinely told that she was worthless by her stepmother, having been denied a proper education and schooled instead to believe her best hope for salvation was to serve, Debbie was vulnerable and insecure, easy prey for any man, especially Ray Blackmore. He was the most important and influential man in her world, and he had singled her out....With the benefit of hindsight, experience and therapy, Debbie wrote to federal Justice Minister Anne McLellan more than thirty years later, begging the government to take action against the fundamentalist Saints. She explained that when leaders constantly talk about “being married and giving birth like it is [equivalent to] winning Olympic gold, by the time you are a 14-year-old girl, there are no words or concepts for anything else.”⁶¹

Drea witnessed girls Palmer’s age being pulled out of school and sent to other countries to be married. In order to get around arrest warrants and laws in the United States and

⁵⁹ See Craig Jones, “Closing Submission of the Attorney General of British Columbia”, March 9, 2011, p. 29 and Hardy, “Mormon Polygamy in Mexico and Canada”, in *The Mormon Presence in Canada*, at p. 209 (footnote 76).

⁶⁰ Bramham, 91. Closing Submission 28-29.

⁶¹ *Ibid.*, 100-101.

Canada, some girls have been “shuffled” to men across the border in Canada, the United States, Mexico and Costa Rica.⁶² Although girls and women in the FLDS community have felt excited for and fantasized about marriage and children, Drea argues “They’re not prepared. They don’t know what they’re dealing with, they get pregnant too young, [and] financially they’re screwed... basically the woman [or girl] is so uneducated she has no idea what she’s getting herself into until she’s old enough to know better, but by then she’s usually got kids and ... economically and emotionally speaking, it’s very difficult for her to get out of it.”⁶³

As we have seen earlier in this study, “a lack of mental capacity may be said to vitiate consent,”⁶⁴ duress leading to a lack of full and free consent can be physical and/or emotional/psychological, and it is crucial that consent is not taken for granted without proof it was possible to give. Girls and women like Palmer who were married in Bountiful in the 1960s, 1970s and 1980s were sometimes illiterate, lacking the capacity to read a marriage license. While some argue they consented to their assigned marriages, Drea – like legal experts, FLDS men, women and girls who have left the community, researchers and feminists – does not believe they fully could in reality. Like her, “they had no idea what they were” and experienced “massive brainwashing from the really young age of like, massively domineering father, really rigid societal views of how women are supposed to be... subservient to their father and then to their husband”⁶⁵.

⁶² Drea, *Interview by Author*, September 1 2011.

⁶³ Drea, *Interview by Author*, September 1 2011.

⁶⁴ Esther L. Lenkinski in *Halsbury’s Laws of Canada*, See “Family” volume, First Edition, HFA-11, “Capacity to Understand Marriage” (LexisNexis Inc., 2010), 134.

⁶⁵ Drea, *Interview by Author*, September 1 2011.

Now a medical doctor and mainstream Mormon, Drea concludes “I don’t consider someone who’s been brainwashed to be able to give consent.”⁶⁶ In addition to lack of consent to marry (at 18 or 16 years old with parental consent), lack of consent for sexual relations (at 16 years old minimum) and work done without pay by children in Bountiful have proved critical issues in discussions on the harms perpetrated there:

Some of Bountiful’s men are in their forties and fifties when they marry girls as young as fourteen, which is Canada’s legal age of sexual consent. The legal age of marriage in B.C. is eighteen, with the consent of a B.C. Supreme Court judge required for any child under sixteen. But before they are even of legal age to be married, a third of Bountiful’s girls are impregnated by men who are at least a decade or more older than they are....Children—boys, mainly, but also girls—are frequently used as unpaid labourers in dangerous construction and forestry jobs. To ensure that those children don’t have any other choices, the leaders encourage them to leave school well before high-school graduation to become either wives and mothers or indentured labourers. It’s all done in the name of God and religion by men who are aiming to be gods with dozens of wives and hundreds of children serving them for eternity.⁶⁷

In spite of these longstanding concerns, it was not until the 1990s that government authorities again turned their attention to child marriages and abuses associated with polygamy in Bountiful.⁶⁸ By this point, Debbie Palmer, who at the age of 15 could not legally consent to marriage, had been treated abusively for decades. Winston Blackmore, like the other FLDS prophets and saints “spent an inordinate amount of time telling girls and women [like Palmer] just how important it is that they submit to and obey their priesthood heads”⁶⁹. From the beginning, Palmer was expected to “keep sweet” in spite

⁶⁶ Ibid.

⁶⁷ Bramham, *The Secret Lives of Saints*, 12-13.

⁶⁸ No records exist of complaints or investigations between the 1950s and 1990s.

⁶⁹ Bramham, *The Secret Lives of Saints*, 192.

of abuse. Bramham explains that “Debbie felt like a prostitute” and years later wrote to her father saying “He never talked to me. I thought sex was love. And I had to be so close to someone and have a penis in me or I didn’t think anyone loved me.... He loved to have sex with me! He even bypassed the Law of Chastity [that forbids sex for pleasure] to have sex with me. But he blamed me and I felt wicked.”⁷⁰

Soon after her marriage to Ray Blackmore, Ray and Anna Mae’s eldest son, Winston Blackmore, threatened Palmer’s life after she miscarried. She later gave birth to a daughter named Memory in November 1973, with whom she was banished from the large Blackmore residence because Blackmore did not want them there. She and Memory lived in a cold room that did not have any heating until they were ordered to return to the home of her father, Dalmon Oler. When Ray Blackmore died in 1974, his will only set forth provisions for Anna Mae and their children. It did not provide for his other five wives and dozens of children. His eldest son, Winston Blackmore, with the blessing of Prophet LeRoy Johnson, reassigned 18 year-old Palmer as the fifth wife of 54 year-old Charles Quinton, who “was abusive and well-known for his cruelty”.⁷¹ Despite the fact that he did not approve, Palmer’s father “handed over his oldest daughter”.⁷² According to sister-wife Lorna Quinton, “He [Ray] [had been] so mean to [Debbie Palmer]. He treated her like dirt”.⁷³ Quinton was arguably more abusive than Blackmore. He cruelly removed Palmer’s newborn son to “weaken the bond between mother and child” and

⁷⁰ Ibid., 192.

⁷¹ Ibid., 117.

⁷² Ibid., 192.

⁷³ Ibid., 178.

Palmer, his other wives and children had dismal living conditions.⁷⁴ In 1976, Lorna Quinton witnessed Palmer's mental and physical breakdown. At her breaking point, Palmer overdosed on pills and set fire to Charles Quinton's store. As a result of these desperate pleas and actions for a way out, Palmer was "released" from her second placement marriage. Once again, however, she was forced to move back with her father. Lorna and her four children, whose home had burned down as a result of the fire, were also taken in by Dalmon Oler. Lorna Quinton explains, "I might have had a breakdown too, only I was too much of a fighter...I had always felt that people who were not part of the group were very unlucky as they did not have a chance to know the fullness of the gospel. I was so wrong."⁷⁵ While recovering in the hospital, Palmer met Marvin Palmer.⁷⁶ According to her, it was the first time she fell in love. In August 1982, the prophet "sealed" her marriage to Marvin Palmer, a man with two wives who had visited her and shown her kindness.⁷⁷ Unfortunately, Debbie Palmers's happiness did not last long. In the late 1980s, Marvin grew more and more abusive. He molested her daughter Memory, and raped Debbie multiple times. When Debbie Palmer approached the FLDS leaders for help, including Memory's half-brother Winston Blackmore, they did not contact law enforcement or social workers to carry out an investigation. "I was numb and exhausted," Palmer recounts about this dark period in her life, during which she attempted to commit

⁷⁴ Ibid., 193.

⁷⁵ Ibid., 179.

⁷⁶ She goes by Palmer still and that is the last name I have employed throughout. Her maiden name is Oler.

⁷⁷ Ibid., 193.

suicide in the Goat River.⁷⁸ Through the help of Faye and Steve Street, Palmer courageously contacted the RCMP and reported the abuse perpetrated against her and her daughter. In 1991, after Marvin Palmer was charged with sexually assaulting Debbie, Debbie Palmer and her children, aided by her Aunt Carmen Oler who lived in Calgary, packed up what they could and fled Bountiful. Significantly, after surviving a forced marriage at 15 years old, a second abusive forced marriage at 18 years old, and rape and sodomy during a third “celestial” marriage between the ages of 26 and 35, “Debbie Palmer was the first woman to leave Bountiful and take all of her children with her.”⁷⁹

Since the 1990s, Palmer’s case and others that occurred in the 1970s and 1980s have received more and more attention amid “allegations of sexual exploitation of and trafficking in young girls.”⁸⁰ Although the RCMP suggested Winston Blackmore and Palmer’s father, Dalmon Oler, be charged in 1991 when they were investigated for suspected polygamy with young girls and women, “no charges were laid because the Attorney General’s Ministry had legal opinion suggesting that the polygamy law was unconstitutional.”⁸¹ Indeed, anti-polygamy laws in Canada were not consistent with the religious freedom guarantee in the Canadian Charter of Rights and Freedoms such that it did not seem likely that a prosecution of Blackmore and company would be successful.

⁷⁸ Ibid., 197.

⁷⁹ Ibid., 202.

⁸⁰ Jones, “Closing Submission of the Attorney General of British Columbia, March 9, 2011, p. 7.

⁸¹ Blackmore has since admitted under oath and on television that several of his 24 wives were under the age of 18 when he married them. See Daphne Bramham, “Conservatives, Polygamy and Cultural Relativism,” *Vancouver Sun*, October 4, 2015. Available at : <http://www.vancouversun.com/touch/story.html?id=11413382>. Also see Daphne Bramham, “Polygamy charges approved against Winston Blackmore, three other leaders of religious sect in Bountiful, B.C.,” *Vancouver Sun*, August 14, 2014. <http://www.vancouversun.com/touch/story.html?id=10115758>

As incredulous as it would seem, this legal opinion prevented charges against them. In 1993, Debbie, along with others, published a report entitled *Life in Bountiful*. In it, they argued that “forced marriages and rigid demands of violence were graver concerns [than polygamy]” and “that the government had failed to consider whether freedom of religion extends to the point of obliterating individual rights.”⁸² Curiously, even legal scholars like Lori Beaman who have supported Bountiful’s right to religious freedom and do not see polygamy as inherently harmful acknowledge that “allegations of child brides and forced marriage [have] dogged the FLDS for decades”⁸³. Consider a few possible reasons for inaction. First, Canada has a history of looking at the racialized other, and since Confederation and its participation in the Temporary Slavery Commission (as we saw earlier in this study) has chosen not to look inwardly at long-stranding Caucasian communities in which forced marriages have taken place. Local community members and companies in Liston and elsewhere have also benefitted from business transactions with the FLDS.⁸⁴ Contrary to the feminist activists who spoke out against such practices during consultations with the *Royal Commission on the Status of Women*, by and large, the community of Liston’s modus operandi has been to mind its own business and avoid intruding in the private lives, bedrooms and marriages of their neighbours, even if abuse is taking place.

⁸² Bramham, *The Secret Lives of Saints*, 234.

⁸³ Beaman in Craig Jones, *A Cruel Arithmetic: Inside the Case Against Polygamy* (Irwin Law: 2012), p. 178.

⁸⁴ These individuals include MLA Howard Dirks, Board Chair John Kettle and Kootenay Chief Chris Luke.

Secondly, since its return to the spotlight, some research focused on polygamy is perhaps to blame for the downplaying of forced marriages in these situations. Angela Campbell has been the most vocal advocate in support of Bountiful's right to practice polygamy. Her research has stressed that much of the regulation of polygamy is based on an assumption that no woman would want to choose to be in a polygamous situation. Within this predominant focus, she has sought to paint a more complete picture, suggesting Bountiful has been treated unfairly, with religious prejudice and over-reaction by the Canadian government. My concern about this research is not polygamy per se, but specifically about the downplaying of the lack of consent to marriage in Bountiful and the harm these forced marriages have caused. After a close reading of Campbell's work⁸⁵ and doing qualitative interviews triangulated with as many forms of evidence as possible to corroborate my findings on cases of forced marriage in Bountiful, I agree with the following statement by Crown Prosecutor Craig Jones:

Campbell, in her affidavit (as in her academic writing) had glancingly characterized child brides at Bountiful as "historical" phenomenon, and a practice "no longer followed". We noted, however, that she simultaneously reported that some of the Bountiful women to whom she spoke described themselves as dedicated to eliminating the practice, something which should hardly be necessary were it not an ongoing concern. Anonymous Witness 2, a woman in her forties, who had married at sixteen, told a very similar story of seeing her daughter marry at fifteen. The marriages described by Anonymous Witness 4 (her own and that of her sister wife, at ages seventeen and fifteen respectively) were not "historical" as I defined the

⁸⁵ I do not by any means preclude or suggest it is not possible for women and girls to choose, consent to or have agency in polygamous marriages in Bountiful. My issue is Campbell's downplaying of forced marriages and lack of evidence beyond interviews to support her claims that lack of choice and consent are exceptional when other first-hand accounts as well as substantial written records, cases and sources have repeatedly found otherwise. My critique is based on the following work by Campbell: "Bountiful Voices." *Osgoode Hall Law Journal*, Vol. 47 (2), 2009, 183-234 and "Wives' Tales Reflecting on Research in Bountiful." *Canadian Journal of Law and Society*, 2008, Vol. 23 (1-2), 121-141.

word, because they occurred in 2003 and 2004. ... The Attorney General had presented evidence of thirteen Bountiful girls married in the United States between 2004 and 2006, aged twelve to eighteen. These facts, we said, indicated that Campbell's characterisation of teen marriage as historical suffered from the frailties of so much of her "qualitative research" – her tendency to uncritically adopt the stories told to her, even where there is readily available data and information directly contradicting her conclusions. This appeared to be particularly so where the data is inconvenient to her revisionist characterization of Bountiful and the FLDS as an unfairly maligned community of odd but generally harmless religious adherents.⁸⁶

My critique of Campbell's research, like the Prosecutor's statement, is a reminder of the need to complement, nuance and combine qualitative research with other sources in order to be as empirical and accurate as possible. It is critical that research on polygamy or other intersecting topics not downplay the incidence of and harm in forced marriage situations.

In its efforts to curtail the harms to society and those involved in polygamous situations in Bountiful, the Canadian state has been in a state of paralysis as it has grappled with how not to infringe upon "religious freedom" and "human liberty". It has not, until recently, zeroed in on the specific harms and consequences for those in forced marriages in these situations, which is my concern. This seems especially strange given, as we have seen, harms to children who cannot legally consent to marriage have long been acknowledged. In 2012, Jones and his team found and presented overwhelming primary and secondary evidence of forced marriages of children in Bountiful and other FLDS communities.⁸⁷ Similar to my findings, the research team could only find a few

⁸⁶ Jones, *A Cruel Arithmetic*, 256.

⁸⁷ See, for example, pages 254-255.

cases in other Canadian communities, most of which were based on anecdotal rather than hard evidence.⁸⁸ The evidence of forced marriages in Bountiful shocked the general Canadian public, many of whom, like members of the Temporary Slavery Commission, thought forced marriage was a “native” practice, or merely something practiced in “uncivilized” immigrant, predominantly Muslim, South Asian and African diasporic communities.

Ironically, although more newspaper articles and references to forced marriage cases in racialized Muslim communities exist in the public domain, with the exception of refugee asylum cases and anecdotal word of mouth cases from service providers, only three formal cases of forced marriage in Muslim communities have been documented.⁸⁹ In her article on legal and social responses to forced marriages of Muslim women in Norway, critical race studies scholar Sherene Razack raises an important question: “How is it possible to acknowledge and confront patriarchal violence within Muslim migrant communities without descending into cultural deficit explanations (they are overly patriarchal and inherently uncivilised) and without inviting extraordinary measures of

⁸⁸ Recall that respondents in this study reported cases of polygamy linked to forced marriages in relation to four declared “ethnicities”: Afghani, African, Bangladeshi, and Mormon. Two respondents informed me of cases of Afghan men and women in Canada adopting girls from abroad and then forcing them to serve as second or third wives in polygamous relationships. I have not been able to corroborate this. Additionally, in one case, the Children’s Aid Society learned of a polygamous forced marriage situation after children attending a GTA school stole food at school because they and their mother had nothing to eat at home after their father left and paid 30,000 US to marry a 13 year old girl in Pakistan. On polygamy in Muslim communities, see page 31 of Attorney General of British Columbia Closing Arguments for the Canadian Reference Case on Polygamy, <http://www.scribd.com/doc/50249694/AGBC-Closing-Arguments-Canadian-Polygamy-Reference-Case>

⁸⁹ They are those of Sandeep Chan (explored earlier), Aqsa Parvez (December 10, 2007, Mississauga, Ontario) and the Shafia family (June 30, 2009, Saint-Léonard borough, Montreal, Quebec). Here, I do not count cases like that of Jasvinder Kaur Sidu in Chapter V, who was murdered for marrying a man of her choosing against the wishes of her family.

stigmatisation, surveillance and control?”⁹⁰ In answer to this question, she concludes that “you can’t fight violence against women with racism because racism is likely to strengthen patriarchal currents in communities under siege.”⁹¹ When it comes to efforts to address forced marriage in Canada, racism has indeed gotten in the way of equity. Consider a few examples. Backing up Razack’s scholarly work, respondents interviewed for this dissertation highlighted several race-based issues. Firstly, due to the limited research on forced marriage in Canada, “We can’t say that there’s a problem with *this* community, there’s a problem with *that* community”, but “we can say that this is a human rights problem”.⁹² To date, the largest initiative to address forced marriage in Canada has been led by the South Asian Community, some of whom are Muslim. As a result, some Canadians have jumped to the conclusion that forced marriage is a South Asian, predominantly Muslim “problem” when the limited data that exists does not support this assumption.⁹³ Secondly, my research reveals that there has been a longstanding problematic disjuncture in terms of accountability inside and outside of racialized communities. On the one hand, people and groups, including service providers and community organizations, do not want to create more focus on forced marriage in their racialized communities, for this can encourage more racism towards individuals who already face systemic discrimination and other hardships, including access to service provision. On the other hand, by remaining silent around the issue of forced marriage

⁹⁰ Razack, “Imperilled Muslim Women, Dangerous Muslim Men and Civilised Europeans: Legal and Social Responses to Forced Marriages,” *Feminist Legal Studies*, 2004, 131.

⁹¹ *Ibid.*, 132.

⁹² Azra, *Interview by Author. Digital Recording*, (Concordia University, Montreal, November 18, 2011).

⁹³ See Anis, Konanur and Mattoo, Eds., “The Incidence of Forced Marriage in Ontario,” 2013.

within any community, including the South Asian one, how will racism and problematic stereotyping in connection with human rights abuses change? As South Asian women's rights activist Rita Kohli asks, "Who do we take care of by saying that our men experience racism?"⁹⁴

Debate in the South Asian community, among others, has centred on race and gender. Problematically, in spite of feminist activism since the 1970s, the position taken by many racialized communities has been that "women have to be sacrificed at the expense of race and racism experienced by men."⁹⁵ As I argued in the start of this study, the fear of discrimination against already racialized communities is very real and significant, but this *ought not* to trump feminist and community human rights work to protect and prioritize those most vulnerable to forced marriage: women and girls.

Additionally, it is critical that race-based concerns do not overshadow the different ways in which racism is experienced by victims and perpetrators. Kohli has written a book in which she highlights some of these racial differences based on historical colonial divides: "the race hegemonic politics are black women are feared, South Asian women despised, Asian women don't exist, First Nation women – now you see them, now you don't."⁹⁶ Since exiting her forced marriage, Kohli has worked in the domestic violence sector and designed a triangle model for service providers that captures the three corners that she believes allow forced marriages to occur: "You have the ideology, which is imbedded in the religion. Then you have the systems and policies and structures in

⁹⁴ Rita Kohli, *Interview by Author*, October 7 2012.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

another corner. And then you have individual behaviors in the third corner.”⁹⁷ All of these factors are connected to the practice of forced marriage and relate it to the ideas, values and assumptions that drive it, and how individuals, whether dominant or subordinate, behave them.

Marriage Acts in provinces and territories across Canada stress that every person has a right to full and free consent in marriage. However, as Kohli’s triangle highlights, in the practicalities of it, it’s not clear how one is to create consent and foster consensual marriages in an unequal context. Charities, the Canadian government and more and more Canadians acknowledge that some women and girls, by virtue of colonial legacies, economic inequalities, racism and precarious status, among other factors, are more vulnerable than others to sexual violence. To date, a similar discourse has not occurred on forced marriage. The reason for this seems to be two-fold: the fear of racism leading to further hardships for racialized and immigrant communities, and the fear of government officials not wanting to disrupt the Canadian image and narrative (particularly abroad) of a multicultural country in which people get along and are law-abiding irrespective of their backgrounds, cultures and religions. Surprisingly, religion is one area where a great deal of unanimity exists across sectors. Officials, judges, survivors, community members and NGOs (from the huge diversity of ethnicities identified and under which cases were reported in Chapter I as well as in the written sources analyzed for this thesis) have taken on religious leaders and unanimously rejected the longstanding justification of forced marriage in Canada in the name of religion.

⁹⁷ Ibid.

“God would not be okay with this.”⁹⁸

While involuntary marriages and the violation of the state-regulated right to choose a marriage partner have taken place in the name of God, no religion, including the FLDS, sanctions the practice. Further, for many survivors, faith and God have provided the strength to seek avenues out of forced marriages.⁹⁹ One daughter of Sikh parents explains that “*The religion is not the problem.... people want to set up or take power because they want to tell other people what to do. It’s about power.*”¹⁰⁰ Her parents were forced to wed in the 1970s. As she recounts,

My mom did *not* consent to marrying my Dad.... She *did not* empower herself and take action. She *did not* agree to it. She was forced into it....The biggest difference actually with her, was, actually, we saw the movie *Chocolat*.... there is this line where someone says “You’re married in the eyes of God” and the woman shouts back, “Well, then God must be blind”. And it’s funny, I remember my mom saying “That’s right”. And my mom is a deeply religious woman. And I was like “what, you think God is blind?” And she said “no, God isn’t blind.” But just that realization, a way of connecting outside of tradition and culture to faith. And I think that sometimes people miss that. That faith is also actually the only way out for a lot of people. Being able to realize that *God would not be okay with this*. That at some point this is not just. Not just legal, not cultural, not traditional, but getting out to a different concept of justice. That this isn’t right. And the religions actually say it isn’t right. But no one talks of those aspects. Those messages are not repeated. They are completely ignored.... *Why are we ignoring the empowering messages for women?*¹⁰¹

⁹⁸ Navdip, *Interview by Author. Digital Recording*. (Flavelle House Law Library, University of Toronto, August 5, 2011).

⁹⁹ According to a leading FLDS expert, “There is no religious reason for church members to marry young.” See Jones, *A Cruel Arithmetic*, p. 258.

¹⁰⁰ Navdip, *Interview by Author*, August 5, 2011.

¹⁰¹ Navdip, *Interview by Author*, August 5, 2011.

When friends of ex-FLDS community member Drea resisted early forced marriages, they were told that “the law of God supersedes the law of man”.¹⁰² Although there is no existing evidence to defend the need for them to marry young girls and women, using God as a means to pressure them to obey and submit to early forced marriages has allowed fundamentalist Mormon men to acquire power and control for decades. Navdip, Drea and Rita Kohli (cited in this chapter), like University of Toronto Law Students Fraser and McCallum, identify as feminists. Kohli stresses that she is “very clear that the narrators of religion writing are men. They are not women. So, in that sense, even how relationships are defined in the religious texts, you have to decipher from a feminist lens, in whose interests are these relationships defined?”¹⁰³ While some survivors like Sikh lawyer Navdip’s mother have embraced religion as a means to heal, and religious leaders have increasingly worked in collaboration with front-line service providers to help foster healing, others have gone one step further, rejecting the institution of marriage all together.

“I don’t!”: Women no longer willing to “obey” and “submit”

From 1968 to 1986, there is more documentation of women (and men) who spoke out against forced marriage in public, and data to support the fact that more Canadians both had the ability and/or made the decision not to marry.¹⁰⁴ Forced marriage documentary filmmaker Azra Rashid was one of them. “I would never encourage

¹⁰² Drea, *Interview by Author*, September 1, 2011.

¹⁰³ Rita Kohli, *Interview by Author*, October 7 2012.

¹⁰⁴ Marriage rates progressively went down in this period. See “Marriages, Canada, 1921-2008 (per 1,000 people)”, Employment and Social Development Canada, available at <http://well-being.esdc.gc.ca/misme-iowb/.3ndic.1t.4r@-eng.jsp?iid=78>

marriage,”¹⁰⁵ she adamantly states. As noted above, the Canadian state ratified the *1979 Convention on the Elimination of All Forms of Discrimination against Women* on 9 January 1982 under which it recognized that “A woman’s right to choose a spouse and enter freely into marriage is central to her life and her dignity and equality as a human being.” Azra and Rita Kohli are examples of Canadians who have deemed it impossible to achieve full equality and human dignity within the institution of marriage. The longstanding misuse of religion as a tool to force individuals to marry and the history of social, legal and economic subordination of women intrinsic to marriage have led them and others to contend that “So long as marriage remains the way in which women can feel “complete” in our society, so long as it remains the way to “identity” for women, women will be forced into marriages where they are terrorized.”¹⁰⁶ At the heart of the debate are the issues of if and how marriage can be restructured. On the one hand, there is the position of Diane Post that “we cannot reshape that relationship without abolishing marriages and its vestiges of slavery that still bind women.”¹⁰⁷ Post argues that “The establishment of men’s power over women in marriage is not an accident, nor secondary to the establishment and maintenance of patriarchy.”¹⁰⁸ As she concludes, “The fact that marriage has existed so long and is so pervasive in culture makes us tend to fail to notice it as a source of institutional oppression like the frog in the slowly boiling water. We get used to it. ...you cannot reform marriage by fits and starts as we have been doing. You

¹⁰⁵ Azra, *Interview by Author*, November 18, 2011.

¹⁰⁶ Post, “Why Marriage Should be Abolished,” 307.

¹⁰⁷ Post, 311.

¹⁰⁸ Post, 286.

must abolish it and start anew with a different relationship between men and women.”¹⁰⁹ For Post and those who subscribe to her position, benefits and other potential positives in marriage like love and companionship are not worthwhile enough to risk having to “obey” and exist within the flawed institution’s confines. The changing views and debates about marriage in this time period expressed by women like Kohli were not lost on journalists and the media. In 1981, as women increasingly demanded freedom and independence in addition to love and commitment in marriage, cartoonist Ben Wicks’ captured the shifting dynamics and tensions for men and women entering marriages.

Figure VI: “Obey!” “Won’t!” “Obey!” “Won’t!”



MIKAN: 2867613

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Wicks McLelland

Ben Wicks, August 22, 1981

¹⁰⁹ Post, 312-313.

It was not a coincidence that this shift in thought grew and resonated when “there begun to emerge alternatives attractive enough to make women question the status of wife”.¹¹⁰ Like earlier feminist activists, Azra and others have made the choice not to marry “either because they regarded marriage as a form of humiliating slavery and dependence upon men, or because they wanted to pursue a career and fulfill their potential in such a way which [they felt] would not have been allowed to them by husbands”.¹¹¹ In contrast to feminist activists and “spinsters” in the early twentieth century who had more precarious economic situations when they refused marriage (and were hence by and large upper and middle class), Canadian women in the 1970s and 1980s lived in a different context in which they, generally speaking, experienced less hardship when they chose to refuse a marriage or to exit a forced marriage.

As Post notes, women, particularly young women, saw that “the facts just do not fit the old clichés”.¹¹² Despite the “better dead than unwed” narrative that young women were taught, women around them could and chose not to marry. The discourse and question for some feminists became “Why be a wife?”¹¹³ Additional factors made marriage less attractive for women than men. For instance, a 1972 study found that the mental health of independent women who had never been married was better than that of married women.¹¹⁴ Writing in 1982, Ayan Sev’er noted that “In terms of their sheer

¹¹⁰ Bernard, “Introduction,” in Chapman and Gates, *Women into Wives*, 1977, 11.

¹¹¹ Jo VanEvery, *Heterosexual Women Changing the Family: Refusing to be a Wife!* (London: Taylor & Francis, 1995), 18. She cites Sheila Jeffreys, *The Spinster and Her Enemies: Feminism and Sexuality* (London: Pandora, 1985), 88.

¹¹² Post, “Why Marriage Should be Abolished,” 13-14.

¹¹³ Jo VanEvery, *Heterosexual Women Changing the Family*, 19.

¹¹⁴ Jessie Bernard, *The Future of Marriage* (New York: World Publishing Company, 1972), 73.

numbers, today there are more single people than any given time before....a growing proportion of people never marry...analysis completed...suggests that 17% of men and 14% of women in Canada will never marry, up from corresponding figures of 10% and 8% in 1971.”¹¹⁵

The rise in unmarried singles in this period can be explained by multiple dynamics. In addition to the feminist push, inherent problems in marriage that feminism made clear and new divorce laws that made it more possible for women and men to exit both forced and non-forced marriage situations, the negative stereotypes about singles such as “selfish”, “maladjusted”, and “lonely” were not as entrenched.¹¹⁶ Additionally, acceptance of singlehood as a “legitimate life choice” was growing.¹¹⁷ For some women, it was preferable not to marry or have children and to pursue careers in place of the “double burden” of working outside the home and looking after children and their households.¹¹⁸ These positions allowed them to promote “changes to laws and practices which contributed to the oppression of married women”¹¹⁹. Other women (and men), also motivated by feminism and the decreasing social stigma of being unmarried, refused to marry as a political statement. For some, the rejection of marriage centered on what Kohli describes as “compulsory heterosexuality”¹²⁰. Kohli is a lesbian, but was coerced into marriage with a man as a young woman. She asks “Where do you have consent when it’s the expected thing for you to be married to a man or be in a common law relationship

¹¹⁵ Aysan Sev’er, *Women and Divorce in Canada*, 1982, p. 253.

¹¹⁶ *Ibid.*, 254.

¹¹⁷ *Ibid.*, 254-255.

¹¹⁸ *Chapman and Gates, Women into Wives*, 1977, 231.

¹¹⁹ Jo VanEvery, *Heterosexual Women Changing the Family*, 18.

¹²⁰ Rita Kohli, *Interview by Author*, October 7 2012.

with a man?”¹²¹ This speaks to the reality of individuals being pressured and/or forced to marry individuals they do not wish to marry on the basis of heteronormative sexuality.

They must not be left out of the history of forced marriage in Canada.

In his study on the relationship between marriage and gay equality, George Chauncey notes that

The freedom to marry and secure their families was one of the most palpable freedoms claimed by former slaves, one of the most personally consequential signs that they were now free citizens, not subject to another’s whim. As one Virginia member of the Coloured Infantry declared, ‘The marriage covenant is at the foundation of all our rights.’¹²²

In the 1970s and 1980s, Canadians increasingly recognized that freedom to choose their marital partner was a fundamental right, and that individuals from the LGBTQ community without this right were vulnerable to forced marriages. Recall that in Chapter I respondents distinguished between heterosexual forced marriage cases and ones involving individuals of different sexualities. They were aware of forced marriages cases involving the following declared sexualities: bisexual, gay, heterosexual, homosexual, lesbian, queer, same-sex, straight, and transsexual. Chauncey’s findings for the United States in this period reflect those shared by LGBTQ respondents interviewed for this thesis who, by and large, rejected the institution of marriage for they identified as male and female feminists and “agreed that marriage was an inherently patriarchal institution,

¹²¹ Ibid.

¹²² George Chauncey, *Why marriage?: the history shaping today’s debate over gay equality* (Cambridge, MA: Basic Books, 2004), p. 62. Chauncey refers to Laura F. Edwards, “‘The Marriage Covenant Is at the Foundation of All Our Rights’: The Politics of Slave Marriages in North Carolina After Emancipation,” *Law and History Review* 14 (1996): 81-124.

which played a central role in structuring the domination of women.”¹²³ Cases of forced marriage of individuals who reject heteronormativity and the constraints imposed by the heteronormative marriage model further challenge assumptions about the institution of marriage in Canada and its failures, highlighting the fundamental discord between rhetoric and reality on forced marriage and marriage more generally.

“Marriage then...is what you call the monster?” – Henry James, *The Golden Bowl*¹²⁴

Like Kohli, other Canadians, particularly feminists and members of the LGBTQ community in this period rejected marriage because of its monstrous history and legacy in perpetrating patriarchy. However, at the same time, many others – some of whom also acknowledged the flaws inherent in the institution or experienced them first-hand in forced and non-forced marriage situations – nevertheless got married, fought to get the right to marry or perpetrated forced marriages. In her “contrarian” social history of marriage, Susan Squires highlights this interesting dialectic. As she explains in an interview,

marriage is such a monstrous catch-22...everyone on the inside complains about being there, and yet ex-insiders tend to go back for more -- once, twice, ten times. It works in strange and mysterious ways, confounding even the couple involved. This is the monster that people can't live with yet can't live without; no society that calls itself civilized is without some form of marriage. So far it's the best system anyone's come up with for organizing sex and family life, and despite periodic rumors of its demise -- and constant grouching about its constraints -- marriage isn't likely to disappear anytime soon.¹²⁵

¹²³ Ibid., 93.

¹²⁴ This quote was found in Susan Squire's *I DON'T: A Contrarian History of Marriage*, 2008.

¹²⁵ Cynthia Kling, “Interview with Susan Squire, author of *I Don't: A Contrarian History of Marriage*,” *Huffington Post*, August 13, 2008.

Those who perpetrate forced marriages are often well-intentioned or guided by what they see as the best interests of the individuals involved. However, when parents, families and communities get to a point where they feel they must “marry off” individuals, this can quickly go too far, for at its root, it is an attempt to “stop a person from being who they are”.¹²⁶ According to Salomé, in the 1970s and 1980s her grandparents and others thought “that if I just marry them, then they are not going to be bad. They are not going to go out and party. If I just marry them, then they are not going to have a boyfriend or a girlfriend,” be gay or have sex before marriage.¹²⁷ While more subtle than cases like that of Sandeep or Nazli featured earlier in this project, this mentality is also based on the assumed right of people to control and exercise power and influence over others, which can lead to devastating consequences.

For instance, the notion that forcing a woman or girl into marriage is for her “well-being” and protection is a misnomer, for, as seen in this thesis, men who have consented or not consented to these marriages can be abusive. Kohli provocatively asks, “Is there such a thing as a good patriarch? Is there such a thing as an anti-racist racist? Is there such a thing as a benevolent capitalist who extorts to give back, and seduces people to think he is a benevolent philanthropist, when the very means that he got is from extortion and exploitation of past relationships, and exploiting the labour of the poor?”¹²⁸ By questioning the language we use, researchers, activists and survivors have sought to highlight and disrupt unequal power relations and effect change for men, women and

¹²⁶ Salomé, *Interview by Author*, December 4, 2011.

¹²⁷ *Ibid.*

¹²⁸ Rita Kohli, *Interview by Author*, October 7 2012.

children in, or at risk of being in, forced marriage situations. At the same time, in order to get the commitment and attention of government officials to act (as we will see in the next chapter), Kohli, Palmer, Christie, Navdip, Salomé, Azra (quoted in this chapter) and others with direct and indirect experiences of forced marriage have written books, created films, and made countless presentations. Central to these initiatives has been a focus on the material dimensions of oppression experienced in forced marriages. As I argued earlier in the dissertation, inspired by the work of Kathleen Canning, it is essential that we not lose sight of the significance of bodily, physical suffering that cannot be captured via language alone.¹²⁹ From the exploitation of a person in a forced marriage situation's labour power, including but not limited to domestic work, cleaning, cooking and the organizing of events, to sexual violence through repeated rape, to physical beatings, conveying the traumatic emotional and physical, often violent aspects of their exploitation is crucial.

Almost twenty years after the 1968 Divorce Act, Canada further simplified divorce procedures. From 1985-1986, no-fault divorce grounds were revised, "making divorce a cheaper, less difficult, and more transparent process"¹³⁰. The changes made to divorce laws were informed by the 1976 Law Reform Commission's *Report on Family Law*, which, as Abbott notes, "underscored how the adversarial nature of divorce poisoned child custody and support" at a time when "the battered women's shelter movement had emerged, safeguarding some women and their children from their

¹²⁹ Canning, *Languages of Labor and Gender*, 2002.

¹³⁰ Abbott, *A History of Marriage*, 232.

abusers”.¹³¹ Following the publication of the Law Reform Commission’s Report, a group of MPs, including G. W. Baldwin of Peace River, recommended, as they had prior to the passing of the 1968 Divorce Bill, that “breakdown of marriage be the sole ground for divorce”.¹³² Other MPs agreed that “the public was ready for a reform of this kind”¹³³. As the issue was being discussed in March of 1977, it was hot in the press. *The Albertan*, for example, published the following caricature, depicting a back bencher and Pierre Trudeau in a wedding dress at a time when Prime Minister Trudeau and his wife Margaret were in the process of separating.¹³⁴

Figure VII: “How’s the ‘No-Fault’ Divorce Bill Coming?”



March 3, 1977.
Library and
Archives Canada,
Box 010200 Item
no. 383, 90.
MIKAN: 2885621.

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¹³¹ Ibid.

¹³² House of Commons Debates, March 1, 1977, p. 3538.

¹³³ Ibid., p. 3544.

¹³⁴ See Eric Siblin, “Passion Before Reason: Former Prime Minister Pierre Trudeau’s turbulent marriage showed his human face,” *The Montreal Gazette*, September 29, 2000. Siblin notes that Margaret’s frustration went public in March 1977”. The couple divorced in 1984.

As seen earlier, Trudeau had been the Minister of Justice when the 1968 Divorce Bill was passed in Parliament. From 1972 to 1975, approximately two thirds of women in North America got divorces.¹³⁵ In March of 1977, MP Robert Daudlin of Kent-Essex reported that “ministers agreed that it was important to move quickly to establish unified family courts, and there was a general recognition that both levels of government must move forward toward adopting the concept of marriage as a partnership of equals.”¹³⁶ This focus on equality within marriage captures the concerns raised by women’s groups, feminists and activists like Rita Kohli. Kohli divorced the man she married without her full and free consent in 1968. She stresses that if people choose to marry it “should be a site where [they] practice human rights. That means you model and mirror working towards equality in an unequal context...and you create families and communities and nations in a local and global context within human dimensions and local legal frameworks of human rights”.¹³⁷ In 1977, Canadian Parliamentarians acknowledged “the view that matrimonial property law reform should precede or accompany divorce reform” so that divorce reforms would take into account a women like Salomé’s Aunt, particularly her “participation in and contribution to the marriage”¹³⁸. MP Baldwin also noted that it would be difficult to make changes to the British North American Act. The difficult position in which Trudeau found himself in 1978 when proposing legal reforms as he himself was no longer with his wife did not escape the notice of the *Toronto Star*:

¹³⁵ Rubin Todres, “Runaway Wives: An Increasing North-American Phenomenon,” *The Family Coordinator*, Vol. 27, No. 1 (Jan., 1978), pp. 17-21.

¹³⁶ House of Commons, March 1, 1977, p. 3544.

¹³⁷ Rita Kohli, *Interview by Author*, October 7 2012.

¹³⁸ House of Commons, March 1, 1977, p. 3544.

Figure VIII: B.N.A Writ for Divorce



June 17, 1978. Library and Archives Canada, Acc. No. 1980-23-1141

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In the end, the new Divorce Act “allow[ed] marriage breakdown, adultery, or physical or mental cruelty as grounds for divorce”.¹³⁹ Until the 1986 Family Law Act came into effect, Mary, a woman of Polish descent, witnessed “all kinds” of non-consensual marriages in her Polish community and others, including in her own family. She explains that “It was awful and very wrong.” Going further, she states “I’m 100% behind [it]...I think it was the best thing that ever happened to women’s rights.”¹⁴⁰ After June 1, 1986 when the Divorce Law came into effect, divorce in Canada grew to rates the country had never seen, surpassing those in 1968.¹⁴¹ Recall that after the reforms eighteen years earlier petitions for divorce increased from 11,165 in 1967 to 38,116 in 1968 alone. As Jo VanEvery writes, “It is increasingly recognized within sociology that power relationships are often invisible (and indeed may depend for their effectiveness on their invisibility). They become visible only on the breakdown of or other disruption to the relationships.”¹⁴² Many of the cases of forced marriage in this chapter and dissertation only came to my attention because they resulted in divorces that produced legal records. Ascertaining what can be done about forced marriages that endure and situations where the victim(s) never come forward or apply for a divorce are significant challenges.¹⁴³ In studying divorce cases and records, we can therefore learn more about forced marriage

¹³⁹ Abbott, *A History of Marriage*, 365. She explains that “Until the 1980s, when marital rape and battery were criminalized, public policy treated them as “domestic” matters.”

¹⁴⁰ Mary, *Interview by Author, Digital Recording*. (York University Toronto, December 1, 2011).

¹⁴¹ Aysan Sev’er, *Women and Divorce in Canada*, 1982, p. 81.

¹⁴² Jo VanEvery, *Heterosexual Women Changing the Family*, p. 3.

¹⁴³ As noted elsewhere, an in-depth exploration of forced marriage cases that exist in police, legal clinic and front-line responder records, but have not been accessed or consulted because they have never found their way into formal reports or archival data bases is one avenue of accessing some of these cases that endure.

and marriage more generally. Statistical analysis on divorce rates in this period also reveals that region is an important variable that merits further exploration with respect to avenues to seek a divorce when in a forced marriage situation. More specifically, case studies for 1971 and 1978 highlighted a trend of higher rates of divorce in Western Canada, urban centres, and areas where interprovincial migration had taken place.¹⁴⁴

In spite of the significant divorce reforms and transformations in the ways in which Canadians viewed and understood marriage between 1968 and 1986, for some individuals in forced marriage situations, family pressures and unequal structural dynamics continued to prevail. The case of the uncle of Sikh lawyer and anti-forced marriage advocate Navdip was one of them. As she recounts, “one of my uncles in the 70s, my grandfather had married him off, had promised him off. And he drank the whole night before and my grandfather sat there with a rifle. And my grandfather is one of those patriarchs. He said ‘you can drink all you want, you’re going through with the wedding in the morning, you’re not shaming me.’ And my grandfather *took the rifle to the wedding*,”¹⁴⁵ forcing her uncle to go through with the marriage.

This chapter has continued to expose and complicate Canada’s history of forced marriage. As we have seen, from 1968 to 1986, Canadian feminists and activists demanded that the Canadian state have “business in the marriages of the nation”, advocating for reforms and action to protect those at risk of exploitation through marriage. Feminists also drew parallels between slavery and marriage, equating the

¹⁴⁴ Frank Trovoto, *The relationship between migration and the provincial divorce rate in Canada, 1971, and 1978: a reassessment*. Edmonton: Department of Sociology, The University of Alberta, 1985.

¹⁴⁵ Navdip, *Interview by Author*, August 5, 2011.

inequality in status and power as well as the risk of abuse and unpaid labour in the latter with the former. New divorce laws and reforms advocated for and informed by the *Royal Commission on the Status of Women* and the Report on Family Law acknowledging the need for greater equality in marriage, led to concrete changes and new options, particularly greater exit avenues for persons in forced marriage situations. The public acknowledgement of the intersection of polygamy and forced marriage also grew in this period, as did action to combat exploitation in communities like that of the FLDS Church in Bountiful. However, this was insufficient in Bountiful and stands out as inadequate when compared to discourse on forced marriage in non-white communities. In this period, Canadians of a diverse range of backgrounds challenged and rejected religious justifications used by perpetrators of forced marriage. Activists, particularly feminists, racialized individuals in the domestic violence sector like Rita Koli and members of the LGBTQ community, sought to address the racialized ways in which the issue of forced marriage was addressed, highlighting how some voices and interests were privileged over others, particularly the fear of racism directed at male perpetrators trumping the protection of women and girls in forced marriage situations. Fewer Canadians chose to marry, more and more women refused to obey and submit in marriage, and some individuals rejected marriage all together because of its longstanding use as a vehicle for the perpetration of violence and control by individuals in positions of power over others. Significantly, while laws changed and avenues grew in terms of support for persons in forced marriage situations, individuals continued to be forced to marry and the existence and persistence of this reality was, by and large, not on the public agenda. As we will see,

building on the work of these early activists, advocates against forced marriage would have greater success in raising public awareness and demanding action between 1986 and 2008.

Chapter V: “It’s a form of slavery people don’t talk about” (1986-2008)¹

In 2001, Amina found herself alone in Uganda after she was married against her will at the age of 14. As she explains,

There was a war when I was young and we lost everything we had. We left Somalia and came to Kenya with nothing. My Mom, she died in Kenya. My father remarried. ... My step-mother always told my father, “She’s old enough to get married.” She pushed my father. When I was 14, they took me out of school to get married. They didn’t even tell me. They made a *nikah* [marriage contract] in the mosque. Then they told me I had to get married. My father didn’t give me a choice. [The man she was forced to marry] was almost 50 years old.²

A permanent resident of Canada since 2006, in Amina’s view, as indicated in the title above, forced marriage is “a form of slavery people don’t talk about.”³ Recall that forced marriages that amount to servile marriage as defined in the 1956 Supplementary Convention constitute slavery. According to Amina, “They force you to do it. You don’t have a choice. If you don’t do it, they’re going to beat you, and hurt you. It’s terrible! ... They can even kill you! ... *Your own family*.”⁴ In her situation, “the man” (how she describes her forced husband), would ask “Why don’t you love me? I am strong, I can force you and I can do everything – have sex with you by force”.⁵ Locked up in a small room where she was forced to do domestic work and have sex with her forced husband, Amina endured eight months of brutal physical and emotional abuse before her escape

¹ Amina, *Interview by Author, Digital Recording* (7 May, 2009).

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

and journey to Canada as a refugee. While each forced marriage case is unique, Amina's shares similarities with a number of cases that have been presented to Citizenship and Immigration Canada and the Immigration and Refugee Board of Canada by individuals from around the world who are in alleged forced marriage situations.⁶

Through the lens of Amina's case study, analysis of cases of social ostracism and murder as they intersect with forced marriage, and a combination of legal, refugee asylum and unreported cases, this chapter offers compelling evidence and valuable insights on forms in which forced marriages manifested in Canada between 1986 and 2008. More specifically, through a broad range of complex cases, the diverse source base for the 22-year period covered in this chapter challenge the overly simplistic narrative of forced marriage as Muslim, African and South Asian phenomenon, often connected to xenophobic and anti-immigrant sentiments. In doing so, it lays the basis for developing a better understanding and a stronger, more comprehensive, complex and nuanced body of literature on the varied responses to forced marriages – that is, on how individuals like Amina, families, groups and communities have accepted, suffered/remained in, negotiated, improved their situations, resisted and rebelled (in covert and overt ways) against perpetrators of forced marriages. The chapter ends with a concise summary of Canada's first national forced marriage conference in 2008, a tipping point in the nation's history of forced marriage.

⁶ See Appendix V.

“Till Death Do Us Part?": From Social Ostracism to Murder

Scholars have highlighted the significant social ostracism that can occur for men, women and children in situations of abuse and injustice.⁷ This phenomenon also occurs in forced marriage situations, during which the threat of social ostracism or actual social rejection and marginalization can (but does not always) take place through a combination of isolation, loss of family and friends, gossip, insults, indifference, aloofness, and community, cultural and/or religious exclusion and excommunication. Consider a few examples. First, 31-year old Drea from British Columbia faced social rejection and was ostracized by the FLDS and moderate Mormon communities when she fled in her teens and twenties. As she recounts, “My family didn’t talk to me for three years when I left ... It was like being sent out to outer space, there was no family connections...it’s really unacceptable to go to an external governmental entity... religious leaders, they don’t encourage you ever leaving that situation”.⁸ Second, the fear of social ostracism held by family and community members have led them to force already marginalized gay men and women to marry heterosexual individuals, or to remain in heterosexual marriages against their will.⁹ As seen in the introduction, Petrimoulx, a trans woman forced to marry a woman, fled to Canada from Mexico in 2005 and received refugee status on the basis of being of a victim of a forced marriage and police brutality.¹⁰ Third, recall that the Aboriginal girls and women coerced to marry white men during colonization and the

⁷ On this theme and the Holocaust, see, for example, Marion Kaplan’s *Between Dignity and Despair* (Oxford: Oxford University Press, 1998).

⁸ Drea, *Interview by Author, Digital Recording* (1 September, 2011).

⁹ Rita Kohli, *Interview by Author, Digital Recording*. (October 7 2012); Deepa Mattoo, *Interview by Author, Digital Recording*, (15 November, 2011).

¹⁰ See Browne, “Against their will: Inside Canada’s forced marriages,” January 15, 2015.

Residential School era in Canada lost their Indian status immediately following these marriages.¹¹ They and their children lost the right to their land, including to be buried with their ancestors. Lastly, for decades, Orthodox Jewish women in Canada have experienced social ostracism as a result of not being able to exit their marriages. B. was one of these *Agunah* (chained wives).¹² The symbolism of this term, for which the direct translation is chained wives, cannot be ignored. Like other forms of forced marriage, rhetorical and direct comparisons have been made between this status and that of slavery. B., who is not an Orthodox Jew and thus did not face nearly as much hardship as other *Agunah* have in Canada, obtained a legal civil divorce in the early 1990s. However, her ex-husband refused to sign the document that would grant her a *get* (a Jewish religious divorce). Knowing she wished to remarry and that their son and his children were Orthodox, making it imperative that her relationship with him be over under Jewish law, B's ex-husband attempted to blackmail her to pay him 20,000 dollars. When she sought to marry a Jewish man she fell in love with more than 15 years after their civil divorce, her ex-husband refused to give her a *get*. She never consented to being married to him following their civil divorce, but was not successful in getting him to sign the *get*. As a result, her second marriage was not recognized by Orthodox Jewish circles, and her children and grandchildren in the Orthodox community faced hardship because her second marriage was viewed as adultery. Finally, after considerable pressure from family

¹¹ Karen, *Interview by Author, Digital Recording* (1 December, 2011).

¹² As defined earlier, an *Agunah* is "a woman 'chained' to a husband either unwilling or unable to grant her a Jewish divorce". See International Council for Agunah Rights: <http://jwa.org/encyclopedia/article/international-coalition-for-agunah-rights-icar#bibliography>

and the community, in 2013 B's ex-husband conceded, giving her the *get*. At that time, she and her new husband to whom she gave full and free consent held a second marriage ceremony at an Orthodox synagogue in Winnipeg.

Figure IX: "He Refuses to Give Me a Divorce"



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While awareness of the *Agunah* issue is very low in Canada, it has been the object of news stories and public forums, including a 2012 panel discussion event at the Beth Avraham Yoseph of Toronto Synagogue featuring Rabbi Daniel Korobkin of Beth Avraham, Rabbi Asher Vale of the Toronto Beit Din, doctoral candidate in socio-legal studies Yael Machtinger, and lawyer Sharon Shore. Further, efforts are underway in Toronto to launch a non-profit organization to work to assist *Agunah* in Canada.¹³

This example of force and lack of consent at the end of a marriage illustrates the need to be aware of the continuum and wide diversity of forced marriage cases.¹⁴ While it differs from many of the cases we have seen in this study, it too is an example of how forced marriages are used to attempt to control people. A number of *Agunah* testimonies exist. Many of the individuals in these situations emphasize the attempted control they experience by their former husbands, a theme that also came to light in Nvivo qualitative data analysis carried out for this dissertation. As noted in Chapter I, 87% of respondents cited “power/control” as a cause of forced marriages.¹⁵ When one *Agunah* repeatedly tried to get a *get* in New York, her ex-husband told her “I can’t give you a get — how else would I control you?”¹⁶ As has been substantiated via Nvivo analysis and argued throughout this thesis, despite attention on certain, often racialized, communities, forced marriages can happen in any culture and religion. One such underpublicized group in

¹³ To date, many Canadian *Agunah* have sought help with an American-led non-profit in New York named the Organization for the Resolution of Agunot (ORA). See Suri Epstein, “Panel at BEIT tackles Agunah issue,” *Jewish Tribune*, May 2012, <http://www.jewishtribune.ca/religion/2012/05/11/panel-at-bayt%E2%80%88tackles-agunah-issue>

¹⁴ B. is my Aunt. She consented to me sharing the details above.

¹⁵ See Chapter I, page 17.

¹⁶ Cited in Doree Lewak, “An orthodox woman’s 3-year divorce fight,” *New York Post*, November 4, 2013.

which evidence suggests forced marriages are a very real concern constitutes Lev Tahor in Sainte-Agathe-des-Monts, Québec.

Over a decade ago, Rabbi Shlomo Helbrans and the Hasidic community he leads named Lev Tahor (“Pure Heart”), laid down roots in Sainte-Agathe-des-Monts, Québec.¹⁷ Ex-members of this group that first originated in Jerusalem in the 1980s, only to move to Brooklyn and then flee and settle in Canada, have reported “violent beatings of children, undocumented weddings involving minors as young as 14, forced marriages and divorces.”¹⁸ A few years ago the *Globe and Mail* documented a case involving “girls, aged 15 and 13 [who] were forcibly detained by Canadian immigration officials in Montreal and returned to Israel apparently under order of an Israeli court.”¹⁹ According to the *Globe and Mail*, “The girls’ great-uncle had petitioned for the writ out of concern that the girls would be harmed by the group in Canada, that their property would be taken,

¹⁷ A few weeks after I wrote this chapter, the Lev Tahor Community moved to Chatham Kent, Ontario. Reports suggest they fled “just ahead of a Nov. 27 court order that 14 children, aged two months to 16 years, be taken into foster care” in Quebec. Law enforcement and child welfare authorities in Ontario are now investigating child marriage claims, among other issues of concern. On September 10, 2014, Quebec police told the public they had evidence of falsified passports and marriage licenses. See Tracey Lindeman, “Lev Tahor: Quebec police believe members falsified passports, marriage licences. A document obtained by CBC/Radio-Canada alleges Lev Tahor members falsified documents to fool officials,” *CBC News*, September 10, 2014, <http://www.cbc.ca/news/canada/montreal/lev-tahor-quebec-police-believe-members-falsified-passports-marriage-licences-1.2761846>; Allan Woods, “Lev Tahor left unpaid bills in Quebec,” *The Star*, December 12, 2013, http://www.thestar.com/news/canada/2013/12/12/lev_tahor_left_unpaid_bills_in_quebec.html; and “Ontario child welfare agency investigating Lev Tahor,” CTV News, November 28, 2013, <http://www.ctvnews.ca/canada/ontario-child-welfare-agency-investigating-lev-tahor-1.1565985>

¹⁸ See Shay Fogelman, “Lev Tahor: Pure as the driven snow, or hearts of darkness?” *Haaretz*, March 9, 2012, <http://www.haaretz.com/weekend/magazine/pure-as-the-driven-snow-or-hearts-of-darkness-1.417553> and Rob Robinson, “What Is The Lev Tahor Cult?” *World Cult Watch*, May 29, 2013, <http://worldcultwatch.org/what-is-the-lev-tahor-cult/>

¹⁹ “Jewish sect girls ordered back to Israel,” October 5 2011, *The Globe and Mail*, <http://www.theglobeandmail.com/news/national/jewish-sect-girls-ordered-back-to-israel/article4199301/>

and that they could be forced to wed male members of the Lev Tahor sect.”²⁰ During his stay with the Lev Tahor community and subsequent research, investigative journalist and reporter Shay Fogelman found that “at least seven recently married couples came up where one or both of the couple was under the age of 16.”²¹ Fogelman spoke to a former Lev Tahor community member who confided to him that “in all of these cases, the marriages were not formally registered with the authorities until the minor reached the age at which he or she could be legally married,” and “other couples composed of minors were sometimes sent to Missouri, in the United States, where marriage is permitted from the age of 15, with parental consent.”²²

Responding to these findings and accusations of forced marriage, Rabbi Helbrans explained that “girls typically marry as teenagers, and partners are ‘suggested’ for them,” but “the women here choose of their own will.”²³ Helbrans denied any underage marriages, but Jewish marriage contracts and passports shared with Fogelman have proved otherwise, raising serious child welfare concerns. In more moderate Orthodox Jewish circles, early marriage is common, and it’s well known that matchmaking in the Jewish community often occurs between individuals in Canada, the United States and Israel. In the documentary film “Match & Marry”, *shadchan* (matchmaker) Esther Jungreis is emphatic about what makes her job and the influence of parents and the

²⁰ Ibid.

²¹ Fogelman, “Lev Tahor,” 2012.

²² Ibid.

²³ Ibid.

community easiest: “The faster, the younger, the better”.²⁴ Recall that 78% of respondents identified a link between young age and vulnerability to forced marriage. For example, one of these respondents, Adden, a Pakistani-Canadian community member and witness to forced marriages, explains that “the more the girl grows up, gets exposed to the outer world, she’ll demand for stuff. So, the younger the more gullible you are. And you’re a target.”²⁵ While consent is certainly possible in situations involving young people, like the respondents in this study, matchmakers in this documentary film acknowledge that it is more difficult to “convince” and “compel” individuals to marry when they are older.

Fueled by legitimate concerns, efforts are underway to uncover what is happening in Lev Tahor by family members of current and former residents of the religious community, the wider Jewish community in Canada, the United States and Israel, advocacy groups and law enforcement officials in Quebec and Ontario. However, very little has been done to investigate the alleged forced marriages. As in Carol Christie’s forced marriage case in the small polygamous Mormon community near Owen Sound explored earlier in this dissertation, the reigning perspective/policy evident in the actions (or lack thereof) of Canadian authorities, officials, and the general public seems to be that Lev Tahor is a nuisance, and that keeping the marriage “ills” occurring there out of site

²⁴ Suzannah Warlick, *Match & Marry*, Santa Clarita, CA: Bubble Soup Productions, c2007, 50 min. DVD, <http://www.matchandmarry.com/credits.html>

²⁵ Adden, *Interview by Author, Digital Recording* (October 11, 2012, York University Village, North York, Ontario).

and out of mind is best.²⁶ In both Lev Tahor and the Mormon Church of Jesus Christ (Restored) near Owen Sound, serious alleged cases of forced marriage and abuse are being ignored. While Helbrans may think girls and boys under the age of sixteen can fully consent to marriages “suggested” for them, this is illegal.

What’s perhaps most curious and interesting about the Lev Tahor case is the racialization and Islamization of this Hasidic Jewish community. In a number of respects, Lev Tahor can be likened to the FLDS community led by Winston Blackmore in Bountiful, British Columbia examined in greater detail in Chapter IV. Like Blackmore, Rabbi Helbrans is a controversial male leader, sees himself as a Messiah, and has been charged with criminal offenses.²⁷ Opponents of the sect also “accuse the rabbi and his followers of polygamy, sexual exploitation and abuse of minors.”²⁸ In spite of these similarities and the fact that the 50 families in this community are white, the sect has been labelled by the international community as the “Jewish Taliban.”²⁹ They are not Muslim, but are categorized as “Taliban-like.” The central justification for this categorization is their extremism and the fact that women and girls wear long black robes, tight head scarves and capes over their long dresses. Local Sainte-Agathe residents who saw the men, women and girls of Lev Tahor on a regular basis, describe them in very different terms. They have likened the women and girls to an all-together different

²⁶ For decades, this nuisance perspective has been the general attitude adopted when it comes to forced marriages and sexual exploitation that occurs in these marriages.

²⁷ See *The People of the State of New York, Respondent, v. Shlomo Helbrans, Appellant*. 94-10395. Supreme Court of New York, Appellate Division, Second Department. 228 A.D.2d 612; 645 N.Y.S.2d 307; 1996 N.Y. App. Div. Lexis 7088.

²⁸ Fogelman, “Lev Tahor,” 2012.

²⁹ See, for example, *Jerusalem Post*, <http://www.jpost.com/National-News/Haredi-family-illegally-crosses-border-into-Jordan-314137> and *The Globe and Mail*, “Jewish sect,” 2011.

group: “the Amish”.³⁰ Whether “Amish,” “Taliban-like” or extremist Hasidic Jews as they themselves identify, opposition to Helbrans has major consequences, including the possibility of expulsion for members of the Lev Tahor community. This Jewish example, like the FLDS one, serves as a reminder that – while there is an alleged (yet to be proven) higher incidence of forced marriage in South Asian and African Diasporic communities in Canada, forced marriages have and continue to take place in other communities. As such, we must avoid stereotypes and generalizations that can be grounded in racist, religious and /or anti-immigrant assumptions.

At the same time, we cannot ignore the large number of cases that have manifested in groups outside of the Canadian mainstream. Indeed, as a whole, this dissertation’s findings about many of the groups in which cases have taken place, including Lev Tahor and the FLDS, suggest that many persons in forced marriage situations in Canada have shared something in common: an outsider status with respect to the general mainstream. Even if forced marriages occur less frequently in the mainstream, the lives of these individuals matter, and by virtue of being part of our nation, Canadians have the responsibility to ensure all citizens have full and free consent in marriage, do not fear seeking help, and have support should they experience social ostracization or violence in forced marriage situations.

To date, social ostracism and violence within forced marriages have often gone hand-in-hand in Lev Tahor, the Mormon Church of Jesus Christ (Restored) near Owen Sound, Bountiful British Columbia, and other communities in Canada. For others, like

³⁰ Fogelman, “Lev Tahor,” 2012.

Jasvinder Kaur Sidu, marrying for love against her family's marriage plans for her inspired and led to murder. The 2001 documentary, *To Love, Honour and Obey* traces the 25-year old native of Maple Ridge, British Columbia's rejection of the arranged marriage plans of her Sikh-Canadian family, secret "love marriage" to Sukwinder Singh Sidu, and eventual murder in an old farm house in India. In the documentary, Professor Hari Sharma of Simon Fraser University contends that "parents are couriers of societal pressure," and that Sikh families in Canada routinely take daughters to India to find an "acceptable" husband.³¹ In 1995, at the age of 19, Jasvinder (known as Jazzi) was taken to India by her family for this purpose. However, "Jazzi broke the rules. She fell in love."³² She did not find an "acceptable" husband, but began a secret relationship with Sukwinder Singh Sidu (known as Mitthu), a rikshaw driver from her mother's village. She knew that her family would not approve of Mitthu. In spite of this, for four years she sent letters to Mitthu and spoke to him via phone from Canada. In one letter, she wrote "I will get in very much trouble if I get caught."³³ In another, "They would not allow us to marry."³⁴

In the spring of 1999, Jazzi visited India again with her mother. While there, she snuck away and married Mitthu in a secret ceremony. When her family in Canada discovered the marriage, they seized her passport, and imprisoned her in their home in Maple Ridge. Jazzi was then coerced by her uncle to sign an affidavit accusing Mitthu of

³¹ Helen Shaver, *To love, honour and obey*, Paperny Films Inc. in association with CTV Television Network. Kelowna, BC: Filmwest Associates [distributor], 2001. VIDEO.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

forcing her to marry him. This example reveals an important lesson – that what may seem like a forced marriage situation on the official record may not in fact be one, but may be an indicator of other forms of violence or abuse. Jazzi escaped her home in Canada, obtained another passport, and returned to be with Mitthu in India. Once she was free from her family, she submitted a second affidavit negating the claims of the first, professing her love for Mitthu. She wrote: “I was threatened by my family and was then physically forced by them to sign a letter stating that our marriage was null and void. The letter that I signed at the Notary Public of Canada was not signed under my free will. I feared for my safety, and was forced to sign something that I knew was my family’s wishes and not my own.”³⁵

After Jazzi’s escape, her mother called and told Mitthu “You’ve defamed us socially. Now get ready to pay the price.”³⁶ Police allege Jazzi’s uncle hired men to ambush Jazzi and Mitthu in India. These men beat and left Mitthu for dead, and kidnapped her. The hit men allegedly called her mother. It appears that Jazzi’s mother clearly told them to kill her daughter. After speaking to her mother, they slit Jazzi’s throat. Mitthu miraculously survived. He spent over six weeks in the hospital before being sent home with permanent injuries. Although Jazzi’s mother and uncle were charged with conspiracy to murder in India and officials in India have the weapons used and necessary phone call evidence to arrest them, extradition from Canada could take years. Jazzi’s neighbours and friends interviewed for the film stressed that “She just

³⁵ Ibid.

³⁶ Ibid.

wanted to follow her heart.”³⁷ They also reported a huge gap between the old and the new generation, for whom “the old ways are slowing giving way.”³⁸ Newly-wed Susan Buba Sukhjit, from the same circle as Jazzi, told film producers “When I was growing up, I knew that it would be my parents’ choice. And I knew it would be mine as well.”³⁹ Speaking to the issue of forced marriage on a cultural level, the statement of Sukhjit’s husband is astute: “It [marriage] only works if you are going to treat her or him as an equal. It’s not going to work, the old style of domineering male...It won’t work here. It doesn’t work in Canada. If all cultures are equal in this society, then all humans are equal in this society.”⁴⁰ While it might not “work” in Canada (or anywhere based on laws globally) as Sukhjit’s husband notes, it does happen. So, while Canada is presented and known as a place of equality and safety, it falls short of this reputation. Relying on this reputation and saying forced marriages have not taken place and will not occur in Canada is not enough. Many hope Jazzi’s death will be a catalyst for change across Canada and beyond, ensuring equality for all. This dissertation lays out concrete actions that are needed to effect change.

Unfortunately, other recent murders connected to alleged forced marriage cases suggest this is far more common than Canadians realize, and are relevant for all Canadians. The two most popularized cases are those of Aqsa Parvez (December 10, 2007, Mississauga, Ontario) and the Shafia family (June 30, 2009, Saint-Léonard

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

borough, Montreal, Quebec).⁴¹ The fact that both cases involved families perceived as outside of the mainstream is partly to blame for inaction prior to these tragic deaths. In the Shafia case, there were clear signs of forced marriages brought to the attention of front-line service providers that precipitated the murders. However, action was not taken. Further, after the murders, “They all talked about the killing, but nobody analyzed the marriage,” remarks Jamila.⁴² Many were quick to deem this a barbaric Islam-inspired case. Few Canadians in the mainstream asked why there were two wives in the picture and if these marriages were consensual. The needs and lives of outsider, racialized individuals facing injustices, violence and death have often been ignored throughout Canadian history, or not given the same attention, relevance or significance as individuals in the mainstream. Violence and the threat of death also loomed large in Amina’s case, to which we will now turn.

Servile Forced Marriage – Amina’s Case and the Somali-Canadian Context

As mentioned in the acknowledgements of this study, Amina’s servile forced marriage motivated me to embark on this project. She introduced me to the issue of forced marriage, and generously shared her lived experiences on multiple occasions, both

⁴¹ See the following academic, legal and popular sources on these two cases: Rochelle L. Terman, “To Specify or Single Out: Should We Use the Term ‘Honor Killing?’” *Muslim World Journal of Human Rights*, Volume 7, Issue 1 2010, Article 2, 39p.; Being a Canadian Muslim Woman in the 21st Century, Module 6a: “The Case of Aqsa Parvez,” 2010, http://ccmw.com/wp-content/uploads/2013/05/06-ccmw_being_muslim_toolkit_module6a.pdf; Pascale Fournier, “Introduction: Honour Crimes and the Law – Public Policy in an Age of Globalization,” *Canadian Criminal Law Review*, 16, 103-114; *Her Majesty the Queen v. Shafia*, 2012 ONSC 1538 (CanLII) – 2012-03-22; Rosie DiManno and Andrew Chung, “Inside the Shafia Murder Case,” A *Toronto Star* Publication, 67p., January 27, 2012; Michael Friscolanti, “The Shafia honour killing trial,” *Macleans*, February 2012.

⁴² Jamila, *Interview by Author, Digital Recording* (11 June, 2012).

formally and informally over a five year period. In return, she urged me to raise awareness about her case and forced marriages across Canada. Her case is unique in that it is by far the case for which I have the highest level of detail and nuance in this dissertation. The following section is an in-depth case study of Amina's experience. It raises important themes and seeks to honour her request that I write about her story.

Although they make vital contributions within their families and communities, Somali women are often economically and socially marginalized.⁴³ Traditionally, men are believed to be superior to women, who are viewed as childlike and unintelligent.⁴⁴ While some Somali men believe that women can be as intelligent and as capable as men, others support "traditional," patriarchal notions and expect women to be obedient wives single-mindedly dedicated to pleasing their husbands.⁴⁵ In spite of international conventions against forced marriage and regional standards on human rights in marriage, from 1986 to 2008 forced marriages, as they did elsewhere, continued to impact women and girls (men and boys) in Somalia and the Somali Diaspora in Canada.⁴⁶

Amina was born in October, 1987. As a toddler, she lived in Bu'aale, Somalia. Her father owned a shop where they sold rice, sugar, and other staple products.⁴⁷ Her family also employed staff to help them run a large garden. However, in the early 1990s

⁴³ See Mariam Ouattara, Purna Sen, and Marilyn Thomson, "Forced marriage, forced sex: the perils of childhood for girls." *Gender and Development*, Vol. 6, No. 3 (Nov., 1998), 27-28.

⁴⁴ A famous nomadic proverb, for instance, says "*Kal caano galeen iyo kas kala dheer*," meaning "A breast that contains milk has no wisdom." Another common proverb, "*Dumar waa caruur cago weyn*," declares "Women are children with big feet." See Shukria Dini, "Negotiating With Men to Help Women: The Success of Somali Women Activists," *Critical Half: Bi-Annual Journal for Women International*, Volume 5, 1 (Winter, 2007), 33.

⁴⁵ Ibid.

⁴⁶ In addition to servile marriage, these practices include genital mutilation, domestic violence, and the deprivation of land and property. Ouattara, Sen and Thomson, "Forced marriage, forced sex," 28.

⁴⁷ Amina, Interview, 7 May, 2009.

“War spoiled everything. There was no money. We lost our house and businesses, everything we had. When there is no peace you cannot stay. Some houses got bombed, and then we moved. We left and came to [Garissa,] Kenya with nothing.”⁴⁸ When Amina was ten, her mother died while giving birth to her baby brother, who also died shortly thereafter. Before her father remarried, apart from civil unrest and what she describes as a traumatic forced genital mutilation at the age of seven, she had a relatively “peaceful” childhood. Prior to her mother’s death, her nuclear family consisted of her father, mother, older sister, and her step-sister and step-brother from her father’s previous marriage. After her biological mother’s death, however, things changed. First, when Amina became ill and lost the ability to feel in her arms and legs, she firmly believes that she would certainly have died had it not been for the daily care and medical treatment provided by her maternal grandmother.⁴⁹ When Amina recovered, she returned to school – only to be pulled out at the age of 14, when she was forced by her father and step-mother to marry a man she did not know. As Amina explains, “I went to religious school and studied the Koran. I learned Swahili, a little English, Math, and subjects students learn in regular school in Canada. My father had remarried approximately six months after my Mom died. We stayed together with his new wife and two kids from a previous marriage. We were 8 in 3 bedrooms.”⁵⁰ She was taken out of school when she was married because “when women are married it’s considered too hard for them to continue....But if the man

⁴⁸ Ibid.

⁴⁹ Amina, Interview, 7 May, 2009.

⁵⁰ Ibid.

is still in school and gets married, he continues. It's not fair. I don't like it."⁵¹ When informed of her engagement, Amina was physically abused and intimidated into accepting her marriage by her family:

They made a *nikah* [marriage contract] in the mosque. Then they told me. My father said, "My daughter, I want the best for you, so now you should know you are married and he is your husband." I didn't want to. I said *no* and didn't eat anything for three whole days. I told them I want to die if they do this. My father wouldn't stop. He wouldn't give in. When I said *no* my father made my older half-brother beat me. Even *he* thought it was okay. In the Koran it's *not* okay. When they beat me hard twice, I said okay because I didn't want to die.... I was scared of men. Even in school I didn't talk to men. Then I was married to my cousin on my father's side. I only met him as a cousin before we married in Kenya. I never met his family and didn't want to.⁵²

Amina is all too aware that often practices that debase women are erroneously associated with Islam and with women's rights as defined in Islam. Many Somali Muslims, (like the respondents interviewed for this thesis from Christian, Jewish, Sikh, Mormon, Mennonite, Hindu and other communities), stress the conflict between theoretical rights in marriage and actual rights in practice.⁵³ Nvivo findings presented earlier in this thesis highlight the control, coercion and power necessary to perpetrate forced marriages across communities, cultures and religious affiliations. Based on her experience, Amina has come to the conclusion that male-dominated groups in power are misusing religion as the basis for forced marriage: "men control everything through religion. Because of their desire to put women back".⁵⁴ In the meantime, Amina and other advocates are concerned

⁵¹ Amina, Interview, 29 July, 2009.

⁵² Amina, Interview, 7 May, 2009.

⁵³ Sadia Ahmed, "Islam and Development: Opportunities and Constraints for Somali Women," *Gender and Development*, Vol. 7, No. 1, (Mar., 1999), 70.

⁵⁴ Ibid.

by the rise in the number of forced marriages they have seen since the 1980s, affecting young girls earlier than in the past in Canada and abroad. The Somali cases undermine traditional marriage customs.

Somali marriages (practiced in the Canadian diaspora, Kenya and Somalia proper) traditionally consist of a series of symbolic rituals. First the man's family makes an appointment for a formal meeting (*doonid*) in which, if the match is considered acceptable, they are received with respect by the girl's or young woman's family. Cross-cousin marriage through in-law relationships, which are considered outside of the family but still inside the clan, known as exogamous marriage, is traditional. Amina was forced to marry her paternal cousin inside the family. This type of marriage is known as endogamous marriage, and is less common. According to research by Judith Garner and Judy El-Bushra's, the type of marriage most encouraged is that between cousins who are likely to be from different lineages. This type of marriage establishes relations between lineages, or strengthens such relations if they already exist.⁵⁵ Same-lineage marriage, on the other hand, is discouraged because if a woman needs help and support, or protection from abuse by her husband, her paternal cousin, now likely to be her husband, would normally have been the one to ensure and take responsibility for her welfare.⁵⁶

Next, the groom's family makes a payment (*gabaati*), which is commonly distributed among the bride's relatives. This payment is not retrievable, and is considered to be a token of respect to the girl's/woman's family and community. The girl/woman is

⁵⁵ Judith Gardner and Judy El-Bushra, *Somalia -The Untold Story: The War through the Eyes of Somali Women* (CIIR and Pluto Press, 2004), 52.

⁵⁶ Ibid.

then officially considered to be the groom's fiancée, but no sexual relationship is sanctioned until the wedding itself.⁵⁷ When the groom's family is ready for the wedding, they bring the bride's family the main payment (*yarad*). The payment includes all of the wedding expenses, in addition to which, the groom also provides the bride's clothes (*mariin*). In Amina's case, it was

Just money as a dowry.... Me, I didn't ask for anything. I wasn't happy. I didn't want anything. They got me clothes, dishes, dresses, stuff like that. I didn't get jewellery. Those clothes, I didn't like them. The *nikah* [engagement] is like being married in North America or Europe. You've already married in the mosque. The wedding is just like a formality. After the wedding you move in with the man. I was not engaged for long.... That kind of thing is *not* normal. They feared that I would run away if I was informed. Everyone knew except my sisters and me.⁵⁸

As Amina explains above, she was married in less than two weeks and was not informed of her marriage in advance because her father and step-mother feared that she would run away. Right after the wedding, she was forced to move to Uganda. This distance apart from her family and community was also deemed necessary so that she would not run away.

Based on findings of the Forum on the Rights of Girls and Women in Marriage (FRGWM), it is not unknown for desperate girls and young women, unwilling to marry, to commit suicide.⁵⁹ Additionally, public knowledge of, recognition of, and action against certain forms of domestic violence against women have increased in many countries in recent years, but much of this has focused on physical abuse alone. In reality, physical

⁵⁷ Ibid., 55.

⁵⁸ Amina, Interview, 29 July, 2009.

⁵⁹ Ouattara, Sen and Thomson, "Forced marriage, forced sex," 28.

abuse is often closely associated with sexual violence as a typical expression of control over women and girls in forced and servile marriages.⁶⁰ However, the sexual violence experienced by women and girls like Amina remains less well recognised than physical violence. Yet, it too has devastating consequences. It denies women bodily integrity and control, causing untold numbers of unwanted pregnancies, and a range of health implications, including the risk of HIV infection.⁶¹

Recall that 30% of the forced marriage situations documented in SALCO's study involved children and youth under the legal age of consent. The FRGWM stresses that "Child marriage must be understood as a situation of danger for girls, characterised by widespread rape and a life of servility."⁶² In their study, in comparison to women who married after the age of 15, young girls were more likely to be illiterate and to have no formal education. Younger brides were also less likely to come into contact with government or voluntary organizations, to have bank accounts in their own names, or to own assets.⁶³ To make matters worse, existing shelters in Somalia, Kenya and Canada are ill-equipped for those who manage to leave forced marriages. These individuals consequently face a host of problems ranging from social ostracism to violent attacks,

⁶⁰ A reminder that servile marriages differ from forced marriages. They are more narrow in scope, relating to provisions in Article I of the 1956 Supplementary Convention. As noted in Chapter II, servile marriage is defined therein as "(c) any institution or practice whereby: (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or (iii) A woman on the death of her husband is liable to be inherited by another person; (d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

⁶¹ Ibid., 30.

⁶² Ibid.

⁶³ Ibid., 31.

including rape and economic destitution. Those abroad who have applied for asylum in Canada, are often living in refugee camps. Amina and the man she was forced to marry, but chooses not to call her “husband” – a linguistic and psychological form of resistance – were refugees in Uganda. According to her, “He had refugee papers and wanted to leave for a better life – maybe to go to Norway. We asked for papers. Then, after that, we went to the UN for an interview.”⁶⁴ During their interview, the UN official did not separate Amina and her 50 year-old cousin. It is not clear why the official did not separate them. Perhaps the official had no reason to press for separation. Amina vividly remembers that “When they asked me ‘How old are you?’ he told them I was 19 when I was 14. He didn’t want to be charged. Then, they asked me if I loved him. I said “Yes” because I was *so scared*. I had *nowhere to go* and I didn’t know *anyone*. Maybe he would have hurt me if I told them the truth.”⁶⁵ Once they moved into a house in Uganda, her forced “husband” made sure she would not be able to seek help: “he was worried the neighbours would ask why I was with such an old man. So he locked me up for 8 months. I couldn’t go outside. He locked me in one room with no light. I couldn’t see anyone.”⁶⁶

As noted above, children are at greater risk of being forced to marry. The practice of forced child marriage also contributes to higher incidences of sexual abuse against young girls: it is, arguably “in effect, the socially legitimised institutionalisation of marital rape.”⁶⁷ In the FRGWM study’s research sample, almost half of the women had

⁶⁴ Amina, Interview, 7 May, 2009.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ouattara, Sen and Thomson, “Forced marriage, forced sex,” 31.

been married at or below the age of 15, and the youngest bride was only seven years old.⁶⁸ In almost 50% of the cases of forced sex or marital rape analysed by the FRGWM, young forced wives made their forced husbands aware of their unwillingness to have sex or of pain during sex, but in 80% of the cases, the rapes continued.⁶⁹ Amina's lack of shock when presented with this statistic is telling: "I'm not surprised at all. [The men] are like that. Some stop and some keep going. Few understand."⁷⁰ Rape in forced marriages, as in other marriages, is often made more traumatic by the absence of public or familial discussion of sexuality and consent to sex. Amina does not recall ever having received sex, fertility, or family planning education. In her experience, teachers and family members "don't like to teach or talk about it, but these days they are teaching more."⁷¹ Anthropologist Catherine Besteman came across a Somali saying that is perhaps telling: "a girl [is] ready for marriage as soon as she [develops] breasts".⁷² The notion advanced by various perpetrators of forced marriage (brought to my attention by respondents interviewed for this thesis) that the attainment of puberty legitimizes non-consensual marriage and sex is highly problematic.⁷³ In tacitly permitting child marriage and sexual activity between adults and children, it denies each girl/boy/adult control over her/his own body, and over whether, when, and with whom she/he marries and has sexual

⁶⁸ For a powerful first-hand account of forced child marriage, read Nujood Ali's story of defiance as a child bride in Yemen. See Nujood Ali with Daphne Mioui, *I am Nujood, Age 10 and Divorced* (New York: Random House, 2010).

⁶⁹ Ouattara, Sen and Thomson, "Forced marriage, forced sex," 31.

⁷⁰ Amina, Interview, 29 July, 2009.

⁷¹ Ibid.

⁷² Catherine Besteman, "Polygyny, Women's Land Tenure, and the "Mother-Son Partnership" in Southern Somalia," *Journal of Anthropological Research*, Vol. 51, No. 3 (Autumn, 1995), 201.

⁷³ On this theme, see Bunting, "Stages of Development," 2005.

relations.⁷⁴ In most countries, servile marriage, as defined by the UN, as well as rape in marriage, have not been criminalised, but sex with children below a certain age is covered by standard rape legislation.⁷⁵ Based on Amina's experience and those of her female relatives and friends in Somalia and the Somali-Canadian Diaspora, "There is no law. They say when a woman has her period she can be married."⁷⁶ This reality is unacceptable. When Amina says there is no law, she is wrong because there are laws (see Chapter II). However, she's right because none of these laws protected her. Despite provisions that should have ensured she had control over her body, sexuality and procreation, and that she was not married against her will after getting her period, all of these violations of her basic human rights took place, highlighting the fundamental discord between rhetoric and existing laws vs. reality.

"I Was a Strong Woman To Do What I did": Locating Overt and Covert Resistance

As noted in Chapter I, where voices of individuals and groups have been ignored throughout the ages, oral history has proved to be a useful methodology in documenting and recovering their experiences.⁷⁷ Until as late as 1972, the Somali language did not

⁷⁴ Ouattara, Sen and Thomson, "Forced marriage, forced sex," 32.

⁷⁵ Ibid.

⁷⁶ Amina, Interview, 29 July, 2009. In addition to the sexual abuse that characterizes servile marriage and further contributes to servitude and female dependency on men, is the inability for Somali women to own land or property. As Besteman concludes, "Most women in Africa live, procreate, and labor in patriarchal systems of resource control." See "Polygyny," 193.

⁷⁷ Farah Hasan, Amina H. Adan and Amina Mohamoud Warsame, "Poetry as Resistance Against Colonialism and Patriarchy," in *Subversive Women: Historical Experiences of Gender and Resistance*, ed. Saskia Wieringa (Zed Books, 1995), 169. This piece was written when the civil war in Somalia had not yet reached the capital, Mogadishu. At the time of publication, one of the authors was in refuge in Sweden and the whereabouts of the two others were still unknown. The research centre they started in Mogadishu was in ruins.

have a written form.⁷⁸ The records of the vast majority of Somalis have therefore depended on memory, and on orally maintaining history from one generation to another. Oral history can thus fill many gaps. Based on their oral history findings, feminist scholars have argued that “Somali women, whether nomadic or urban, have never been submissive, either to natural calamities or to social oppression. They have expressed their grievances, hopes, and philosophy through poetry handed from ... grandmother to mother to daughter, the ‘bearers and transmitters’ of female cultural heritage.”⁷⁹ As is the case for other persons in forced marriage situations, through the merging of oral and written sources, a lot can be discovered of the lives, struggles, movements, organizations, discontents, and responses of Somali-Canadian women, girls, men and boys on the matter of forced marriage.⁸⁰

Through the oral transcript of her experience, Amina provides us with one example of what individual, every day acts of resistance, contestation and survival look like in situations of forced servile marriage. While “there are some who commit suicide,” she recounts “I was strong.”⁸¹ When Amina was first incarcerated in a small, dark room, her resistance was covert, and manifested in her cooking:

Sometimes he made me cook, but I didn’t like it. So sometimes I took off dirt from my foot, and put a lot of salt on his food only. I was not happy with him. When we were at the table eating he would say “What is this!

⁷⁸ Ibid., 168. As Hasan, Adan and Warsame explain, the Somali script, a modified Roman script, was officially created in 1972. Before 1960, the administrative language was Italian in the south, and English in the north. From 1960 to 1972, English became the administrative language of both regions.

⁷⁹ Ibid.

⁸⁰ For instance, research suggests that Somali feminism was not borrowed from western ideology, but indigenous to Somalia. Other studies provide insight into the fundamental role played by Somali women during the Somali struggle for independence. Ibid., 167 and 169.

⁸¹ Amina, Interview, 29 July, 2009.

This is crazy!" I would say, "What, do *I* not have a tongue, do *I* not have taste buds? Mine is fine. I am eating this. If you don't want it, throw it out." It was funny! I did this a lot of times. I made him a lot of things that didn't taste right.⁸²

Next, Amina took more assertive, open action: "I didn't want him to like me. We didn't have a shower, so he would make himself hot water. Hot, hot water. I would just take that water and pour it down. So he would have to use cold water to wash himself. He would ask 'Why are you doing this?' He didn't understand."⁸³ Amina's sabotage grew even bolder when she started destroying things: "I would try to break the dishes, to make him suffer."⁸⁴ She carried out these acts on a day-to-day basis, "but after all of that, he didn't tire."⁸⁵ At times, Amina's resistance was met with fierce restriction and male dominance. A low point for her occurred when her forced "husband" refused to let her experience the company of a neighbour:

There was this lady who used to come take the fire....When you are making the charcoal, when you don't have fire, you go to the neighbour and you take the fire. So this lady, she was coming sometimes to take the fire and to see me. He didn't want anybody to ever come and told that lady she shouldn't come to see me. I felt tired, so, so tired. What to do? After everything, he didn't give up. It was a long time. I was never happy. I always did bad things to make him dislike me and he couldn't stop. And after that, I thought "this is too much! I can't take it anymore. If it continues like this I will never be able to get out."⁸⁶

Her next course of action was to feign love and obeisance in order to earn the trust of her forced "husband":

⁸² Amina, Interview, 7 May, 2009.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

I started to be nice, to cook for him and act like I loved him. Just lying, pretending, you know? I did this so he would let me out because he saw that I had no family, nobody there. Even if he killed me there, nobody would have known. My family would just maybe have asked what happened. I don't know what they would have done. Also, I didn't know the language. I only knew Swahili. I didn't know Kigali or English, so I didn't have or know anybody to talk to. I had nothing at all. I didn't know what to do. Then, I tried to be nice and thought "okay, let me try to pretend." And, he let me out because he thought maybe I had changed, that I was trying to love him. He let me outside a little bit, and when he let me outside I didn't go outside and stay long. I just told him that I needed to buy this or that, and he gave me that money, and I bought that and came home. I didn't know where to go. If I had just gone right away for a long time, I wouldn't have known where to go for help. I had to think before I left.⁸⁷

After gradually earning his trust, Amina took a courageous, calculated risk. She used the money she was given by her forced husband to make a purchase in the market for transportation in order to seek help at the United Nations headquarters in Kampala, Uganda:

When I went to the UN, they at first didn't want to help me. I was living in the capital of Uganda, and I had to take a motorcycle there. They didn't accept me right away, *of course*. But they knew what I was talking about. I told them "I have a problem with this guy. He's old and my father forced me to marry him. I was 14, almost 15 when I had to marry him." I told them, "This man, I don't love him. And, this man, he's not a good man and my family gave me to him, and he locked me up for a long time." They knew I was with the guy because the guy was a refugee. We showed up together. And the mistake I made was I had told them I loved him. I was lying! I told them "I was lying." I didn't love the guy. I told them it was because they asked me the question when the guy was there! What was I supposed to say? I was so scared that he would hurt me.⁸⁸

⁸⁷ Ibid.

⁸⁸ Ibid.

After a disappointing first experience, Amina returned home and told her forced “husband” she had been delayed because she was unable to make up her mind on what to buy at the market. Weeks later, she sought help from the UN once again:

I came back. It was not easy for them to accept me. I stayed all the way to night fall....The protections officer came. And he asked me “What are you doing here?” And I said “You know what, I’m not going anywhere because I’m so scared about that man and you guys are not doing *anything* for me. You are helping people, and I am asking for help. I *need* your help!” I told him I can’t continue like this. I feel bad! Who knows what’s going to happen to me after all. I’m human, I can’t take anymore! Staying eight months inside not seeing any sun! When you come outside, you are like “Oh my God!” It’s terrible! I had to help myself. I got sick, but I was strong. I was so tired and everything, but I stayed at the UN office and they accepted me. That’s how I got out.⁸⁹

Amina is proud of the determination and conviction she exercised in order to be heard.

After a long day and night of convincing and explaining, UN officials provided her with a safe place to stay. Authorities attempted to arrest her forced “husband,” but were unable to locate him after he ran away. Amina remained in Uganda for almost three years until she received Canadian refugee and permanent resident status. Local police found her forced “husband” eventually, but he failed to make an appearance on the day of his trial and he did not go to jail.⁹⁰ At the present time, Amina reports “I am happy. Things have changed. I am a free woman.”⁹¹ The distance and nine years away from her sisters, one of whom is currently living in a refugee camp in Kenya in an attempt to avoid a forced

⁸⁹ Ibid.

⁹⁰ Neither did Amina’s father, for which she is grateful: “My father, he’s still my father. I wouldn’t do anything to hurt him. I’m really sorry this thing happened to me, and I feel very bad this happened, but I wouldn’t put my father in jail because he’s my father. My Mom she died when I was young, and he’s the only one that was like a parent to me. And still it’s not easy to forgive, so I kind of let him go and forgive him like that.” Amina, Interview, 7 May, 2009.

⁹¹ Ibid.

marriage, have been difficult. Amina wishes she could do more. She firmly believes that “Some people don’t know or believe today that forced marriage is happening,” and that there is no question “it’s going to happen to other girls, other innocent girls.”⁹² For this reason, like 100% of respondents interviewed for this study, she stresses the urgent need for education, awareness and publicity to prevent forced marriages: “It’s good to talk about it, to do many things, to tell people, to give them education about this and what happened to me and others, and decide how they should stop it. Because it’s not life. Some women die or kill themselves or just stay with the man. I was a strong woman to do what I did.”⁹³ Today, Amina is engaged to a fiancé she loves and has two beautiful little girls. She is a mentor to young women who are new to Canada, determined to help them be strong and move forward.

Amina’s case is one example of hundreds reviewed by the IRB and CIC every year. Indeed, based on a search of all of the available public records, I found a total of 76 refugee status and judicial review cases that reference forced marriage(s) between 1989 and 2008.⁹⁴ As noted in Chapter I, these cases involved persons in alleged forced marriage situations from 27 countries of origin. The individuals resided or had hearings in 13 Canadian cities.⁹⁵ Unfortunately, data prior to the creation of the IRB in 1989 are not available. Approximately 70 cases since December 31, 2008 are available in the public record. According to John Warner, head of ATIP at CIC, “Between January 2010

⁹² Amina, Interview, 29 July, 2009.

⁹³ Amina, Interview, 7 May, 2009.

⁹⁴ See Appendix V.

⁹⁵ See Table III in Chapter I entitled “Ethnic Descriptors Referenced to Describe Forced Marriage Cases In or Involving Canada (in alphabetical order).”

and September 2012, the IRB indicated over 600 cases citing forced marriages.”⁹⁶

However, known cases are not tracked well by CIC. In Warner’s words, “In all honesty, our department is terrible at giving out data.” Data received via an Access to Information Request was only helpful for the period between January 1, 2009 and November 27, 2013 during which 1,148 cases were categorized as having the claim type “Female – Forced Marriage”. Further, there were 924 cases “citing a forced marriage that have been rejected or successful”.⁹⁷ The table in Appendix V includes a breakdown of the 76 cases in the public record falling within the timeframe of this study between 1989 and 2008. There are five instances of cases that went before both the IRB and CIC, all unsuccessful.⁹⁸ In most cases, the locations where claimants who have spent time in Canada lived were not disclosed. Similarly, the documents did not disclose the ages of all 76 individuals. We know, however, that, in total, 79% of the individuals in the table are female, and 21% are male.

Interestingly, the number of successful cases is highest under Prime Minister Jean Chrétien who was in power from 4 November, 1993 to 11 December, 2003. During this period, the IRB granted ten single and/or group applicants refugee status. Three of the successful applicants were from Guinea, two from Nigeria, and one from Thailand, France/Syria, the Central African Republic, Cameroon, Djibouti and Zimbabwe respectively. All of the successful applicants were female with the exception of one

⁹⁶ This verbatim quote is based on my phone conversation with Warner on 20 November, 2013.

⁹⁷ Immigration and Refugee Protection Board of Canada Refugee Protection Division, ATIP-2013-01293, p. 1

⁹⁸ See table entries 58, 64, 66, 67, 74 of these CIC hearings which refer to the corresponding IRB dates.

father, two sons and one brother-in-law, all of whom were granted refugee status in group applications with at least one female family member. Cases heard in Montreal were most successful, followed by Toronto and Ottawa. The largest number of judicial reviews was also granted in this period: two to individuals from Guinea and one to individuals from Kenya, Burkina Faso, Ghana and Nigeria.

From 12 December, 2003 to 5 February, 2006, success rates were considerably lower under Prime Minister Paul Martin. No applicants in my data sample were granted refugee status, and only 6 reviews/appeals were granted. And, from 2006-2008 while Stephen Harper was Prime Minister, success rates dropped even lower. Only two judicial reviews were granted, both for female Nigerian applicants. That said, the poor data collection methods of the IRB and CIC, combined with information restrictions due to confidentiality concerns make it difficult to analyse these cases in a comprehensive manner. For example, forced marriage is rarely the only ground for refugee claims. As Dauvergne and Millbank highlight, claims are more successful when combined with other gender-based claims like FGM. This appears to still be the case in the sample I analysed. However, due to information gaps in these 76 cases from 1989-2008 and the inability to access the hundreds of others that exist, it is difficult to draw conclusions as to the extent to which alleged forced marriage situations have led to successful claims. In addition, as the IRB explained to me, “the statistics provided on claim types are not necessarily reliable for determining the basis for a decision on a claim for several

reasons”.⁹⁹ For instance, “information is collected as a case management tool to triage the case load”, ““claim type” categories are generic and may not be accurate for any specific case, but may be the “best fit” given the categories”, and “claim types may change along the way”.¹⁰⁰ Further research is thus needed.

Within the confines of this study, consider two key observations. Firstly, a problematic gender bias against potential male victims of forced marriage is clear in several alleged cases. In the 2003 *Traoré v. Canada* case, CIC rejected the application for refugee status made by a male citizen of Mali residing in Winnipeg, citing among their rationales that “The documentary evidence does not support the applicant’s claim that men are subjected to forced marriages; rather, it indicates only that girls are.”¹⁰¹ In his submission response to this finding, Ousmane Traoré rightly stresses that “sons are victims of a paternalistic society” as well as daughters.¹⁰² Similarly, three years later in *Diadama v. Canada*, CIC held the IRB’s decision to dismiss the application of Haji Diadama, a 34 year-old male Muslim citizen of Liberia who cited a forced marriage as a ground for his claim. Diadama was in a relationship with a Christian woman with whom he attended a Christian church. He was beaten by family until he agreed to marry a Muslim woman. According to Diadama, “his family beat him, breaking his wrist and thumb” when he refused to marry this Muslim woman, and he feared further assault and

⁹⁹ IRB, ATIP-2013-01293, p. 2.

¹⁰⁰ Ibid.

¹⁰¹ *Traore v. Canada* (Minister of Citizenship and Immigration), 2003 FC 1256 (CanLII), para. 6:2.

¹⁰² Ibid., para. 14.

possible death.¹⁰³ However, the board concluded that they “did not err in finding that lack of supporting documentary evidence was sufficient to rebut [the] presumption of truthfulness of [the] applicant” and that “country conditions would have mentioned prevalence of arranged marriages, especially for males, if such practices were prevalent in Liberia”.¹⁰⁴ Both Traoré and Diadama acknowledge that, as men, they are part and parcel of a patriarchal system, but, at the same time, a reality that is larger than these two men: the fact that as men they are vulnerable to forced marriage and abuse. This reality – that men can be victims of patriarchy – is not compatible with the deeply ingrained philosophy that has informed decisions by CIC and the IRB: that is, the notion that masculinity and abuse of any kind, be it violence or forced marriage, are incompatible. This leaves their experiences outside of the narrative and scope of what is acceptable as forced marriage. As a result, they are denied the possibility of justice.¹⁰⁵

As noted earlier, in spite of this denial grounded in ideas of masculinity, multiple male victims of forced marriage have come forward and sought assistance from front-line service providers, particularly in the United Kingdom and the United States.¹⁰⁶ It follows that men from Mali and Liberia, as well as other men and boys around the world, can and do in fact experience forced marriage situations. Their claims should be taken seriously

¹⁰³ *Diadama v. Canada* (Minister of Citizenship and Immigration), 2006 FC 1206 (CanLII)

¹⁰⁴ *Ibid.*

¹⁰⁵ An additional dynamic that requires further research is the dynamic of white courts and non-white applicants.

¹⁰⁶ While I am not aware of any scholarship on male forced marriage in Africa, Chris Dolan has conducted an interesting project on sexual violence perpetrated against men in Uganda within the context of the LRA conflict. See <http://www.refugeelawproject.org/index.php>

by CIC and the IRB, whether or not cases of forced marriage perpetrated against men and boys in these countries exist in the public record.

Secondly, it is important to study how the terms “slavery” and “slave” are used by the boards and applicants in these forced marriage situation claims. In the December 18, 2001 hearing of *X. v. Canada* in Montreal overseen by refugee claim officer Michel Paquin, the panel found that “forcing a woman to marry an individual whom she does not love is both a serious negation of her freedom of choice and a form of slavery, and for that reason, a forced marriage amounts to persecution for a Convention ground.”¹⁰⁷ This statement, like the dozens of laws on forced marriage, acknowledges the vulnerability of women to forced marriage by virtue of their gender. The November 1999 case of *X (Re)* involving commercial sexual exploitation¹⁰⁸ cites the 1956 Supplementary Convention on Slavery. As noted above, this Convention only includes women as possible persons in forced marriage situations. Similarly, forced marriage is a risk factor for commercial sexual exploitation of women and girls that falls under trafficking and slavery legislation. In *Eimani v. Canada*, the board disagreed with the applicant’s claim that “she was treated like a ‘slave’”. They made this decision based on her “statement that she expected to work as a journalist after her marriage” which they found “inconsistent with her alleged

¹⁰⁷ *X. v. Canada* (Immigration and Refugee Board), 2001 CanLII 26904 (IRB). As Dauvergne and Millbank’s analysis found, forced marriage alone has generally not proved enough grounds as a “persecutory harm” for a successful refugee claim. The success rate has been much higher when forced marriage has been combined with other grounds such as fgm. See “Forced Marriage as a Harm in Domestic and International Law,” 2010.

¹⁰⁸ I have used the term “commercial sexual exploitation” rather than “prostitute” or “prostituted” throughout this thesis. This linguistic choice is based on my reading of the 1998 *Out of the Shadows & Into the Light* report released following the international summit of experiential youth in Victoria, British Columbia during which youth declared the term “prostitute” should no longer be used to describe cases of sexual exploitation and sexual abuse. See <http://03559de.netsolhost.com/vicreport-e.htm>

treatment during her two-week stay with Mr. Akuti [the man to whom she was betrothed]”.¹⁰⁹ It’s possible that Eimani expected, hoped or demanded that she would have a different marriage dynamic than being treated like a “slave” as defined by the law when she stayed with Mr. Akuti for a two week period. Perhaps this is even why she made her claim – to ensure her relationship dynamic would change. However, there is no explanation as to how the board came to this decision, leaving more questions than answers.

Consider a final example in which slavery language is used. In *Camara v. Canada*, the applicant alleged that “her new husband was violent and treated his wives like slaves.”¹¹⁰ Camara, a native of the Republic of Guinea, was 35 years old when her uncle “announced that it was time she married” and “told her that he had decided to give her hand in marriage to one of his friends, Kaba Sandou, a prosperous man 27 years her senior who already had two wives.”¹¹¹ Her uncle threatened to disown her if she refused to marry Sandou. As a result, she “finally consented to this marriage which she did not want, because she feared reprisals from her family if she refused.”¹¹² The court documents about this case reveal treatment of Camara that amounts to slavery as defined in the 1926 Slavery Convention from which “the powers attaching to the right of ownership” definition of slavery originates, exercised in this case by her uncle. In addition, the way in which she was allegedly treated is akin to abuses experienced by

¹⁰⁹ *Eimani v. Canada* (Minister of Citizenship and Immigration), 2005 FC 42 (CanLII), para. 5c). There is no explanation as to how they came to this decision.

¹¹⁰ *Camara v. Canada* (Citizenship and Immigration), 2008 FC 362 (CanLII), para. 6.

¹¹¹ *Ibid.*, para. 5.

¹¹² *Ibid.*

slaves during the Transatlantic slave trade. Specifically, in July 2006, “Mr. Kaba allegedly cut her on the face with a razor blade,” and “burned her chest and abdomen with an iron,” marking her as his.¹¹³

These two examples have illustrated both the accurate use and misuse of slavery language in claims for asylum and refugee status.¹¹⁴ The appropriate use of slavery language captures the egregious, horrific nature of this institution. Its obvious misuse by refugee applicants reveals that they – like colonial officials and state actors throughout this thesis – have sought to benefit from the “anti-slavery game” through which the institution of slavery can powerfully evoke extreme violence and exploitation, perhaps helping their claims for asylum and refugee status. Both forms reveal the clout ‘slavery’ has as a crime against humanity that is most often considered to be abolished, but in fact a contemporary reality Canada needs to acknowledge.

Case law from 1986 to 2008 also reveals that Canadian citizens have been forced to marry non-citizens, who like refugees, have sought to get status in Canada. Consider *S.(A.) v. S.(A.)*¹¹⁵. In 1988, 16-year old S.A. “went through a marriage” with S. following “considerable pressure being applied against her by her natural mother and step-father.”¹¹⁶ Given that she was 16, her mother consented to her daughter’s marriage. However, as was revealed in court, S.A.’s mother and step-father, the latter having a

¹¹³ Ibid., para. 7 and 8.

¹¹⁴ A similar phenomenon is evident in the use of trafficking language by NGOs and social justice groups. On this, see Joel Quirk and Marlise Richter, “Human trafficking and Africa’s ‘pornography of pain’: the pitfalls of CSR,” *Open Democracy*, 2 September 2015.

¹¹⁵ To avoid confusion below, I have referred to the female as S.A. and the male as S.

¹¹⁶ *S.(A.) v. S.(A.)* [1988] O.J. No. 1407 65 O.R. (2d) 720 15 R.F.L. (3d) 443, 11 A.C.W.S. (3d) 438, Action No. D/527/87, Ontario Unified Family Court, Judicial District of Hamilton-wentworth, September 2, 1988, para. 2 and 3b).

history of sexual abuse against S.A. documented by the Children’s Aid Society in Calgary, were promised between \$500 and \$2,000 dollars from S., who was from abroad. S.A. “testified that she did not want to marry the respondent, that she did not live with him after the ceremony, that the parties never engaged in sexual intercourse, and that the respondent subsequently left Canada.”¹¹⁷ In the end, S.A. was granted an annulment, for the judge determined that “consent obtained by duress renders a marriage voidable on the application of the aggrieved party”.¹¹⁸

When examined closely, other annulment cases in this period reveal both forced and contrived forced marriage situations perpetrated by individuals with varying agendas. As the \$500 to \$2500 incentive of S.A.’s parents reveals, one agenda has been economic. In the case of *Khan v. Mansour* the loss of a house and saving face after being rejected come to the fore as additional possible motives for making potentially false forced marriage accusations. In 1989, 23-year-old Sophia Khan, requested “a declaration of nullity” based on “lack of consent or impotence” in her marriage to a Mr. Mansour.¹¹⁹ Mansour had “entered into a verbal agreement with [Khan] and her family, concerning the setting up of the parties’ household, and ... was given a period of four months to establish a household under supervision.”¹²⁰ Following this agreement, Khan “went through the ceremony in Mississauga” and “knew that the ceremony was a ceremony of

¹¹⁷ Ibid., para. 9.

¹¹⁸ Ibid., para. 28.

¹¹⁹ *Khan v. Mansour*, [1989] O.J. No. 1804, 70 O.R. (2d) 492, 22 R.F.L. (3d) 370, 17 A.C.W.S. (3d) 1095, Action No. D/511/89, Ontario Unified Family Court, Judicial District of Hamilton-wentworth, October 25, 1989, para. 3.

¹²⁰ Ibid., para. 5.

marriage, in the sense that it was designed to make the parties husband and wife”¹²¹. The difficulties in their relationship developed “after the four-month period had elapsed, when [Mansour] basically told [Khan] that he had no feelings towards her and that he would rather not have anything to do with her.”¹²² Although he embarrassed her by rejecting her by not having sexual relations, and did not meet her economic expectations by failing to provide her with a household as he had promised, the judge found that her “consent given at the time of the ceremony was a real, understanding and voluntary consent”¹²³. In the end, she was indeed lied to in terms of the lifestyle Mansour promised and the vows he made to be her husband, but she “failed to establish an absence of consent at the time of the marriage ceremony”, which was the basis for her application.¹²⁴

Consider another annulment case in which a groom, who appears to have been coerced into marriage, no longer wished to live with or be married to his bride. In *Saeed v. Nabi*, Sardar Saeed applied for an annulment following his marriage to Jacklin Nabi, alleging he was “under duress and did not voluntarily consent” at the time of their

¹²¹ Ibid., para. 8.

¹²² Ibid., para. 8.

¹²³ Ibid., para. 6. The 2002 case of *Ali v. Ahmad* shares many commonalities with this case. It was also dismissed with the only difference being that Ali, the female party in the marriage, applied for an annulment after Ahmad left her once she had moved to Canada from Iraq following their marriage. In this case, Ahmad claimed that “Ali wanted to marry him because he could help her immigrate to Canada”. See *Ali v. Ahmad*, [2002] O.J. No. 397, [2002] O.T.C. 72, 111 A.C.W.S. (3d) 535, Court File No. London F393/01, Ontario Superior Court of Justice, Family Court, G. Campbell J., Heard: December 14, 2001, Judgment: January 30, 2002. On the issue of marriage immigration fraud, see the following two cases: *Merchant v. Dossani* [2007] A.J. No. 815, 2007 ABQB 487, [2007] 10 W.W.R. 504, Edmonton; and *Torfehnejad v. Salimi* [2006] O.J. No. 4633, 276 D.L.R. (4th) 733, 32 R.F.L. (6th) 115, 2006 CarswellOnt 7275

¹²⁴ Ibid., para., 9.

marriage.¹²⁵ According to the court documents, Saeed’s father had arranged their marriage in Iraq when his son was an infant. According to Saeed, who emigrated with his family to Canada in 1993, his father “insisted” that he sponsor Nabi as his fiancée, who had emigrated to Germany with her family in the 1990s. In early 1998, Nabi arrived in Canada. At that time, she and Saeed spoke to one another for the first time. Their marriage took place a few months later on March 27. Following the ceremony and party, they lived together as of April 10, 1998. After approximately three weeks, Saeed “advised [Nabi] that he no longer wished to cohabit with her and, after some property was damaged by her, she left and, apparently, returned to Germany.”¹²⁶ According to his counsel, “because of the pressure and extreme duress under which [Saeed] felt he was placed, he did not “voluntarily consent” to the marriage. It should, therefore, be declared null and void, ab initio.”¹²⁷ Saeed told Judge Campbell that “he participated in the wedding ceremony (and “the party” some two weeks later) because “when his father made a decision, that’s it. You have to do it. You don’t ... you don’t have any choice.”¹²⁸ Saeed claimed he also feared his father would disown him if he refused to marry Nabi. While acknowledging the clear pressure Saeed felt, Judge Campbell, could find no “suggestion whatsoever that there were any threats or any overt actions made towards the applicant”.¹²⁹ Saeed’s “evidence [was] not corroborated by that of his father or family or

¹²⁵ *Saeed v. Nabi* [1999] O.J. No. 1396, 87 A.C.W.S. (3d) 740, Court File No. F777/98, Ontario Superior Court of Justice, Family Court - London, Ontario, Heard: August 17, 1998. Judgment: April 19, 1999.

¹²⁶ *Ibid.*, para. 3.

¹²⁷ *Ibid.*, para. 4.

¹²⁸ *Ibid.*, para. 5.

¹²⁹ *Ibid.*, para. 9.

anyone from his extended ethnic community”, and considered odd given he had no trouble going against his family’s wishes by asking Nabi to leave and filing for an annulment three weeks later.¹³⁰ Based on this, Campbell concluded that Saeed’s “fear or the duress he felt was internal” and “subjective”.¹³¹ As such, he dismissed his application for an annulment of marriage on the ground of lack of consent. One wonders if the fact that Saeed, like Traoré and Diadama, was male was a factor in Judge Campbell’s decision. Here again, the gendered expectation and perception that men are outside the possibility of duress must be taken into consideration. Assuming men never lack the ability to consent or experience abuse via forced marriage risks excluding their experiences and denying justice. It’s also not clear if Nabi had full and free consent, nor is it clear how old both her and Saeed were at the time of their marriage.

When it comes to age, this study has found that children and teens, like Amina and S.A. in the cases mentioned earlier, are particularly vulnerable to forced marriage. However, forced marriage – that is, any marriage which occurs without the full and free consent of one or both individuals – can impact people of any age and be perpetrated by people of varying ages and backgrounds. These perpetrators have varying agendas, but share a common capacity and desire to exercise power and control over others. The case of *Barrett Estate v. Dexter* is an example of this. Like the 1965 case of *Capon v. McLay* in Chapter III, *Barrett Estate v. Dexter* is an example of how elderly people, particularly

¹³⁰ Ibid., para. 12.

¹³¹ Ibid., para. 9.

those with dementia, can lack the capacity to give consent in marriage, and be coerced to marry a person seeking to take advantage of them economically.

On July 3, 1993, Dwight Wesley Barrett's wife of 55 years passed away. By February 1996, the widower's sons were worried about their 90-year old father's "ability to live alone and manage his affairs".¹³² They arranged for 54-year old Arleen Sharn-Dexter, a live-in assistant Dwight had met at the Okotoks Seniors Club, to rent a room in Dwight's house and "drive Dwight, do some cooking, and maintain the common areas of the home"¹³³. Soon thereafter her "involvement and influence on Dwight's life [became and] continued to be cause for mounting concern"¹³⁴. From having Dwight sign a document allowing her to live in his home for free, to uncharacteristically large purchases and daily withdrawals from his bank account, to bank personnel witnessing Dwight handing over money to Arlene, to Arlene taking Dwight to a lawyer hoping to cancel the power of attorney held by his sons, it became clear that Arlene seemed to be after their father's money.¹³⁵

Without Arleen's knowledge, Dwight's sons took their father to their family physician and a Geriatric Specialist. The latter found Dwight to be "Quite significantly deteriorated in cognitive function and certainly not aware of legal and financial matters and that his judgment [was] impaired along with his other cognitive and intellectual

¹³² *Barrett Estate v. Dexter* [2000] A.J. No. 955 2000 ABQB 530 268 A.R. 101 34 E.T.R. (2d) 1 98 A.C.W.S. (3d) 1055 Action No. 9801-02525, Alberta Court of Queen's Bench, Judicial District of Calgary, Judgment: filed July 28, 2000, para. 4 and 7.

¹³³ *Ibid.*, para. 10-11.

¹³⁴ *Ibid.*, para. 14.

¹³⁵ *Ibid.*, para. 15.

factors.”¹³⁶ According to the record, “On October 18, 1996 John attended at the residence of his father and attempted to obtain explanations of financial transactions reflected in the bank statements, particularly with respect to cash withdrawals therefrom. Dwight had little knowledge or understanding of those transactions and Arleen was not helpful.”¹³⁷ Then, nine days later, “On October 27, 1996, Arleen attended with Dwight to apply for a marriage licence. She testified that she and Dwight had become engaged on October 22, 1996.”¹³⁸ Four days later, on Halloween 1996, “Arleen made an appointment with a marriage commissioner in Calgary to be married at 7:00 p.m.”¹³⁹ To her surprise, at the last minute her son-in-law refused to act as a witness, leaving her legally short one witness. However, two days later, Arlene succeeded: “Dwight and Arleen travelled by limousine to Calgary where the marriage was performed by Grace McLaughlin with their limousine driver and an additional taxi cab driver acting as witnesses.”¹⁴⁰ Soon thereafter, Dwight passed away. In their case against Arlene, Dwight’s sons provided “ample evidence” to argue that that marriage should be annulled because, among other concerns, Dwight was “unduly influenced by Arleen in such a manner that he was not acting of his own will and accord”.¹⁴¹ Dwight’s geriatric specialist, Dr. Skelton testified that he was “specifically concerned about Dwight's vulnerability to influence prior to the marriage”, and his family doctor, Dr. Malloy, testified that “the evidence indicated many of the actions instigated by Arleen demonstrated the subversion of Dwight's will and his

¹³⁶ Ibid., para. 18.

¹³⁷ Ibid., para. 21.

¹³⁸ Ibid.

¹³⁹ Ibid., para. 22.

¹⁴⁰ Ibid.

¹⁴¹ Ibid., para. 35 and 42.

alienation towards his family.”¹⁴² Concluding “that the medical evidence adduced by the Plaintiff establishes on an overwhelming preponderance of probability that Dwight Barrett lacked the mental capacity to enter into a marriage contract or any form of marriage on November 2, 1996,” Judge Wilkins declared the marriage null and void.

The 2003 case of *Feng v. Sung Estate* shares many parallels with Dwight’s case. Here too, it appears that a much younger woman sought to take advantage of a wealthy, elderly, sick man whose family argued did not have the ability to give his full and free consent to marry her shortly before his death. The supplementary reasons for Judge Greer’s decision in the case explain that Mr. Sung’s wife passed away in June, 2000. In October 2000, “70-year-old Sung met the 47-year-old Feng... She was initially his housekeeper. Feng claimed they became romantically involved and had sexual relations until June 2001. However, her evidence was contradictory. Sung was impotent. He was diagnosed with lung cancer in May 2001.”¹⁴³ Strangely, in August 2001, Sung did not tell any of his five children when he and Feng were married. Even further alarming, “Prior to the marriage, he had intended to execute a prenuptial agreement that only gave Feng \$30,000 should he pass away. However Feng prevented the completion of the prenuptial agreement, as she took back the retainer cheque from the lawyer.”¹⁴⁴ Two months later, Sung passed away. According to the court, “Feng was a vague and evasive witness” and “She received \$30,000 from Sung but proceeded to withdraw another \$26,500 from his

¹⁴² Ibid., para. 42.

¹⁴³ *Qi Li Feng v. Kam Yuen Sung Estate*, City of Toronto, [2003] O.J. No. 1593 [2003] O.T.C. 355, 1 E.T.R. (3d) 296, 37 R.F.L. (5th) 441, 122 A.C.W.S. (3d) 508, Court File No. 05-53/01, Ontario Superior Court of Justice, Estates List, Greer J., Heard: January 8, 30, and 31, 2003; written submissions, March 7, 2003. Judgment: April 28, 2003.

¹⁴⁴ Ibid.

account over a six-day period before and after Sung's death."¹⁴⁵ As in Dwight's case and the 1955 *Pascuzzi v. Passcuzzi* case seen earlier, Judge Greer emphasized that "duress including threats, where no physical power is exerted" can exist and lead to "fear of sufficient degree to vitiate consent".¹⁴⁶ Based on this and the evidence presented, he concluded the marriage to be void ab initio, for Feng had coerced Sung to marry her via duress.

While the cases in the section above were reported and can be found in the public record, many forced marriage situations involving Canadians are never reported. Consider one example. Respondent Jamila is a member of the Afghan-Canadian community. At 21 years old, her parents worried she would never get married. That is why "I didn't have a choice"¹⁴⁷ Jamila explains. As she notes, after being away from Afghanistan teaching computer and English classes in Pakistan,

I came home, and my sister said "you got engaged".... I knew it was wrong because nobody asked me. And, I didn't know the person¹⁴⁸ *at all*. ... I did not feel loved. ... from the very beginning, I knew it was forced marriage.... It was actually my birthday ... My parents actually told me "this is your birthday gift" It was a terrible, terrible birthday gift.¹⁴⁹

She was engaged without her consent on January 25, 1996. "That's the day that I met him when we got engaged. And we got married on February 8 same year, 1996. Thirteen days later," she explains. Jamila arrived in Canada via spousal sponsorship. In addition to

¹⁴⁵ Ibid.

¹⁴⁶ Ibid., para. 65

¹⁴⁷ Jamila, *Interview by Author, Digital Recording* (11 June, 2012).

¹⁴⁸ This is another example of linguistic avoidance /de-legitimatization of the term "husband" by a female survivor of forced marriage.

¹⁴⁹ Jamila, *Interview by Author, Digital Recording* (11 June, 2012).

being in a forced marriage situation, she was overwhelmed by what she quickly learned about her forced husband and his family:

I thought that a person who lives in Canada has education. I thought that a person who lives in Canada will respect women. I thought that a person who was in Canada wants to fight for people's rights. I was *that* kind of person *my whole life*. ... He's 17 years older. It was a huge shock ... I was forced to stay with his parents, mom, brother and sister-in-law [before the marriage]. In his family, there were nine people, adding me, ten people, and you were living in a two bedroom apartment. ... Women in their side of the family were not supposed to go to school and study. ..His brother told my father – he speaks of it now – that “we want women only for pleasure. Women are nothing but to give pleasure to men.” I always think “how could have my Dad digested this” knowing that I am his daughter?¹⁵⁰

“From the very beginning, I knew it was forced marriage. But then it took me years to realize that not only is it forced marriage, but I am in an abusive relationship,”¹⁵¹ she stresses. She explains that women like her are “between a rock and a hard place.”¹⁵² The first action taken by her forced husband was to give her a contract to sign, stating she would pay back her landing fee the minute she started working. However, he would not allow her to attend English classes. She was further alarmed by his collection of lingerie and clothing belonging to other women, the blood stains she found on the bed they shared when she arrived, and his hoarding of items stacked from floor to roof in their one bedroom apartment. It was difficult for her without friends or relatives to talk to. “At the time we didn't have a lot of long distance cards like now we have. So I internalized *every* single thing. *Every* single behavior....it took me years to actually make a plan of

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Ibid.

leaving,”¹⁵³ Jamila stresses. Having two children back to back, no outside support, no driver’s license, and speaking little English, made it difficult, next to impossible, for her to leave.

Adding to her difficulties, she was given the cold shoulder by Afghan community groups in Canada. One executive director told her that there were no jobs for her, even though Jamila had worked for the UN, had a background in medicine, and experience running a clinic for orphans for the very organization for which this woman worked. Another unemployment agency insulted Jamila because she was Afghani, Muslim and on social assistance before Jamila understood what was meant by social assistance. During those years, “I *had* the right to access the bank account. I *had* the right to have money with me. I didn’t know that, and I didn’t research, and he didn’t tell me,” she explains. She adds that “I didn’t know that if you are an immigrant and you are in an abusive relationship that you can actually get out. Especially when I just came. Cause I thought if I’m not with him, I have no other way, and will be deported.”¹⁵⁴ Jamila also feared she would lose her children if she left her forced husband. “1999 is when I decided I am gonna leave him. And 2011 is when I left him. It took me that long,” she explains. In the meantime, while her forced husband “was not providing a penny,” she went back to school, completed a college program, worked two full time jobs, worked a part time job, raised her children and bought a house so she and her children would have a place to live when she left. Like many people in forced marriage situations she says “I didn’t want to

¹⁵³ Ibid.

¹⁵⁴ Jamila, *Interview by Author, Digital Recording* (11 June, 2012).

leave and just go to a shelter. I didn't want to leave because I've seen life in shelter. I know how people live. I worked there. I know how hard it is. I didn't want to uproot my children, but then not be able to offer them a stable environment.”¹⁵⁵ Jamila had witnessed women seek out legal aid to get a divorce or annulment, only to lose because their lawyers did not have the time or resources to mount proper investigations. Unfortunately, she is aware of other forced marriage situations, including a case involving her ex-husband's 28 year-old- niece in Canada who was forced to marry a 17 or 18 year old cousin in Afghanistan. It's not clear if this young man consented. Thankfully, in Jamila's opinion, the spousal sponsorship her ex-niece was forced to file “did not go through”, suggesting perhaps that Canadian authorities, armed with more knowledge about forced marriage and marriage fraud in recent years, are more aware of such cases.

“Knowledge is Power” in the Face of Pure Patriarchy

Afghan-Canadian survivor Jamila identifies as a feminist, and shares many of the beliefs articulated by feminist activists in Chapter IV. Interestingly, like Constance Backhouse in her research on the early 20th century, Jamila also stresses that inequalities, ills and abuses perpetuated via marriage occur due to our “pure patriarchy society” in which females often “don't have any control, and they don't have any freedom to choose”¹⁵⁶ who they marry. However, “once you know more, you get to be more

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

outspoken and stand up for yourself,”¹⁵⁷ particularly when it comes to each person’s right to full and free consent in marriage. As she notes, “It’s critical in what kind of environment you ask that consent. So if it’s in a confined environment that you can’t even breathe, and you nod and consent, that [is] not actually consent.”¹⁵⁸ After her difficult forced marriage, she believes her parents learned that consent is vital. The most telling evidence of this is their lack of interference in her younger sister’s “marriage for love” to a Guyanese man. Echoing findings in this dissertation about the limitations of the law, Jamila stresses that

part of the problem in Canada is that the legal system, some of the laws are so loose, that people get away. Yes we are Canadian. Yes we are polite and we love people. But at the same time we have to make sure that it doesn’t turn into a jungle....Because we live in this country, we don’t live under religious law. We live under civil law. Those laws should be enforced....We can still be respectful, but we *all* know – I knew that I am not coming to an Islamic country. So we *all* know what kind of country we are entering. In order to protect some of the things, maybe we have to lose some of the things.¹⁵⁹

Canadians would be shocked with Jamila’s portrayal of Canada as a “jungle”. It challenges the picture Canada has in the international arena where it is known and prides itself for its “peace, order and good government.”¹⁶⁰ Jamila is rightly concerned that the desire by some to uphold and protect Canada’s diversity and multiculturalism has come at the expense of ignoring abuse and the infringement of the individual right to full and

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ See Steve Mertl, “Canada loses its ‘boy scout’ reputation in the eyes of the world,” Canada News, 7 December, 2013: <https://ca.news.yahoo.com/blogs/dailybrew/canada-loses-boy-scout-reputation-eyes-world-142615438.html>

free consent in marriage.¹⁶¹ She calls for sterner regulations and policies for community agencies and leaders who do not follow laws and codes of ethics in Canada, and for groundwork in the countries of origin of immigrants sponsored to Canada, so that individuals receive accurate, helpful information. While doing so may run the risk of targeting groups that are already racialized, this concern and a desire to be respectful of all religions and cultures must not trump laws in Canada or feminist and community human rights work to protect and prioritize those most vulnerable to forced marriage: women and girls. Further, as Jamila wants the general public, young people and the government to know, “the damage is deeper than they think. ... It takes more than the counseling to heal. It takes more than the legal system to stand up on your feet. And it takes more than just talking about it to feel safe.”¹⁶² Indeed, in order to properly come alongside of persons in forced marriage situations, Canada must invest more funding into system changes, long term services and support systems. In spite of the many challenges she had to overcome, Jamilia stresses “There is always a way to get out. There is always a way. The way might be dark. The path may be uneven, and lots of bumps, but there is the possibility to get out.”¹⁶³

Canada’s Light Bulb Moment: SALCO’s 2008 Forced Marriage Conference

In 2008, the biggest first step on what has been a bumpy, sometimes non-existent path to addressing forced marriage in Canada took place in Toronto: SALCO’s “The

¹⁶¹ Jamila, *Interview by Author, Digital Recording* (11 June, 2012).

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

Right to Choose International Symposium on Non-Consensual Marriage”.¹⁶⁴ Lead up to the conference and the event itself received a lot of media attention, mainly because many were shocked to learn of the existence of forced marriage in Canada. (See the Call for Papers and a story in the Toronto Star in Appendix VI and Appendix VII, respectively.) Until this event, and, to some extent during it, most reports depicted forced marriage as solely a historical problem in “backward” Aboriginal communities and/or a contemporary issue in “foreign” immigrant communities, particularly among South Asians and Muslims. In spite of this limitation and failure to grasp the greater breadth of cases that exists, for the first time, Canadians from coast to coast read and reacted to incontrovertible evidence that forced marriage is an issue in Canada that has gone under the radar for far too long. Further, mainstream Canadians who previously saw this as a peripheral issue were challenged to acknowledge that the lives of Canadians in forced marriages matter to all Canadians by virtue of these individuals being part of our nation.

A number of survivors and experts shared their accounts of forced marriage. Sandeep Chand, interviewed for this study and whose oral testimonial is in Chapter II, shared her story of survival at the symposium. So too did Jasvinder Sanghera, a forced marriage survivor and activist in the United Kingdom. Community-based researcher, Uzma Shakir, who is now Director of the Office of Equity, Diversity, and Human Rights for the City of Toronto, shared her findings. Attendees also heard strategies and best practices put in place from forced marriage experts in Bangladesh and the United

¹⁶⁴ See “Selected Proceedings from Toronto, June 2008, www.awid.org/Library/Selected-proceedings-from-The-Right-to-Choose-international-symposium-on-non-consensual-marriage-Toronto-Canada-June-2008

Kingdom. As the epilogue explains, this was a major tipping point. Sixty years after Canadian officials signed the UDHR, the first international consensus document recognizing (under Article 16:2) that “Marriage shall be entered into only with the free and full consent of the intending parties” government officials, social services, the NGO sector, researchers, survivors, lawyers, law enforcement, concerned citizens, religious leaders, journalists and others from across Canada gathered together for the first time with experts from other countries. Following this event, many of these attendees have collaborated and played important roles in launching a series of strategies and initiatives that have been put in place over the past seven years.¹⁶⁵ However, as we saw in Chapter III, government officials have continued to use rhetoric and make statements and decisions that do not reflect on-the-ground needs and realities. For instance, while demand for services increased, funding for the Forced Marriage Project led by Shirley Gillet through Agincourt Community Services was cut by Status of Women, leaving individuals in precarious forced marriage situations without support, and abandoning a promising ESL project. Gillet continues to receive calls, but she and others have lost their jobs in spite of the need for their work. Most recently, the federal government ignored and misused SALCO’s 2013 research report.

In their joint statement in reaction to Bill S-7, controversially named the *Zero Tolerance for Barbaric Cultural Practices Act*, SALCO, the Barbara Schlifer Commemorative Clinic, Metro Toronto Chinese & Southeast Asian Legal Clinic, South Asian Women’s Centre, Woman Abuse Council of Toronto, Federation of Muslim

¹⁶⁵ See Epilogue.

Women, The Redwood Shelter, Rights of Non-Status Women Network, FCJ Refugee Centre, La Maison Shelter, Rupaleem Bhuyan and Anita Khanna state, among a long list of serious concerns, that the government “failed to consult experts in this field about what creates further barriers to accessing safety for women experiencing violence,” that the language in Bill S-7 serves to perpetuate myths, and that its provisions are “antithetical to Canada’s obligations (e.g. under CEDAW) and professed interest in protecting the vulnerable”.¹⁶⁶ Additionally, data published in SALCO’s 2013 research study was taken out of context, the research team’s clear recommendation not to criminalize forced marriage (sent to the federal government) was ignored, and the government failed to consult front-line experts and individuals with lived experience, as clearly suggested in the report. Perhaps most alarming, Bill S-7 passed in 2015, but “the federal government has failed to tangibly support victims by supporting the shelters, front-line service providers and support workers who are working in tandem with these victims.”¹⁶⁷ As a result, “victims will [likely] go deeper underground”.¹⁶⁸ Thus, since 2008, momentum and action to prevent forced marriage situations is greater than ever before, but the tension between rhetoric and reality that has marked the history of forced marriage in Canada remains, and the country is in desperate need of a national strategy, sustained funding and a massive public awareness campaign.

¹⁶⁶ See Joint Statement, November 18 2014, pp. 1-5,
<http://www.salc.on.ca/FINALBILLS7STATEMENT%20updated%20nov%2018.pdf>

¹⁶⁷ Ibid., 4.

¹⁶⁸ Ibid.

Amina's experience, Jamila's non-reported forced marriage, examples of social ostracism and murder connected to forced marriages, biases and stereotypes about what forced marriage should look like in legal, CIC and IRB records and other cases in this chapter have provided us with additional examples of the complexities at play and diverse range of forced marriage situations in Canada between 1986 and 2008. Here again, as in the preceding chapters, feminists express the link between forced marriages, gender dynamics and inequalities between men and women. As we have also seen, in important ways, a diversity of sources makes it possible to "dig a little deeper" to identify more information on the experiences of persons in forced marriage situations. From sabotaging her forced husband's food, to purposely spilling his hot bath water, to destroying things, to acting, plotting and carrying out a daring escape – individual acts undetectable by an outsider – Amina's experience and that of others bring us closer to an understanding of the complex, particular realities (including race, class, gender, status, sexuality, institutional systems and structures) and consequences for persons in situations of forced marriage, giving them a voice. This voice confirms that individuals living in forced marriage situations, despite appearances of outward consent, can and do challenge those in power through their respective and unique day-to-day responses and actions.

This chapter, like this dissertation, has argued that as scholars grapple with the methodological and historiographical challenges to approaching forced marriage, voices of survivors like Amina offer compelling insights on their diverse responses. A more systematic study of these voices will not only help increase forced marriage prevention, but also enhance and revise our understanding of marriage in Canada by including this

longstanding “ill” in our collective history of marriage. Some women and girls who have experienced forced marriage have internalized the idea that their work and lives are less important than those of men and boys. The horrors of forced marriage and forced sex within marriage that befall girls and women in Canada and across the world reinforce this type of thinking. Grey zones remain surrounding the notions of consent, arranged, forced and servile marriage, and a tight, intellectual apparatus on responses to forced and servile marriage is still in its infancy. Certainly, greater recognition of the incidence of the trauma induced by this crime is necessary, as is more effective action in the implementation of evidence-based domestic and international instruments so that targeted change and improvements come into fruition. Canadian women of Somali descent like Amina are among those who are breaking the silence on the hidden issue of forced marriage and other forms of local and global violence against women and girls couched in religion, culture and tradition. Amina emphasizes that “They say it’s culture, but it’s abuse,” and that “These days it’s getting more normal”.¹⁶⁹ In the face of this illegal “abuse”, as Amina rightly calls forced marriage, we must not allow fears of potential racism or discrimination trump a collective feminist response to forced marriage in Canada that privileges the voices of the women and girls who are most vulnerable. In the spirit of privileging the voices of women and girls who are Canadian citizens of Somali descent like Amina, this chapter concludes with the last few lines of a poem written by

¹⁶⁹ Amina, Interview, 7 May, 2009, and Amina, Interview, 29 July, 2009.

Dahabo Elina Muse.¹⁷⁰ Her poem depicts the conditions under which they live and against which they rebel:

And now, appeal!
Appeal for love lost,
Appeal for dreams broken
Appeal for the right to live as a whole
Appeal to Aido
And all peace loving people
Protect, support give a hand
To innocent little girls who do no harm,
Obedient to their parents, elders
And all they know is only smiles.
Initiate them to the world of love
Not to the world of feminine sorrow!

¹⁷⁰ Hasan, Adan and Warsame, "Poetry as Resistance," 180-182. Poem translated by Adan.

Conclusion

Although it was terrible, it made me who I am today. And because this happened to me, it was a life lesson for me. It transformed me into a better person. So I lived as a cocoon for a very, very long time, not knowing that I could turn into a butterfly. And you know what? We all have that strength within. The cocoon has to decide whether it's gonna die or whether it's going to come out of the chrysalis and become a butterfly. The choice is ours. – Nazli¹

Since 1948, Nazli, whose words began this thesis, and Canadians from coast to coast have increasingly come out of the chrysalis, raising their voices against forced marriage. Some Canadians have jumped on misleading band wagons, led by the media, government officials, legislators, policy makers and interest groups, who have weaved discourses on forced marriage that have framed the issue inaccurately and un-empirically. As we have seen, this has perpetuated misinformed ideas about persons of Aboriginal descent, men and women who have opposed patriarchal marriage in favour of other models, and, most recently, the presumed but not proven connection between forced marriages and immigrant or refugee, typically Muslim, African and South Asian, racialized diasporic communities.

Without conducting comprehensive archival and secondary research or spending time with and listening to individuals with intimate knowledge and first-hand experiences of forced marriage, anecdotal stories and early research on forced marriage did not capture the complex, cross-cultural, transnational nature of this issue, affecting persons of various ages, genders, ethnicities, cultures, communities and religions. It also neglected

¹ Nazli, *Interview by Author*, August 20, 2012.

to analyse the power, control, dominance and violence these cases share, at their root, in common. This project's empirical research, analysis and eclectic source base allows for a move beyond the problematic discourses on forced marriages involving Canada. It has led to new findings and preoccupations about language, particularities and commonalities in experiences, and emphasized the power, control, dominance and violence at the core of forced marriage cases impacting 84 groups described as ethnicities and 50 sub-groups linked to these ethnicities. Grounded in a contextualization of forced marriage over *la longue durée*, this study began in 1948, after consent was made a requisite element in marriage. It challenges assumptions about the institution of marriage in Canada, highlighting the fundamental discord between rhetoric and reality on forced marriage, the many forms and contexts in which forced marriages have taken place, how and why they are perpetrated.

Further, it provides irrefutable evidence of the longstanding history and persistence of forced marriages in Canada in spite of existing laws and the legal, alleged freedom for all to choose one's spouse and to marry "for love". Coontz's historical survey of marriage found that after "five thousand years, marriage came to be seen as a private relationship between two individuals rather than one link in a larger system of political and economic alliances."² Today, as men, women and children continue to struggle for the right to determine who/if/when to marry, many living in countries where marriage laws are not yet recognized, protected or enforced, it is important that we do not

² Coontz, *Marriage, A History*, 146.

forget the recentness and the limits of this shift some historians have labelled radical, even revolutionary.

Respondents in this thesis stressed, over and over again, that as people of all backgrounds adjust to this shift the answer to the question of what can be done about forced marriage in Canada, and globally, lies in formal and popular education and awareness. For scholars, this means better historicizing and understanding the diverse range of written records and voices, both experiential and non-experiential, through more sustained, comprehensive research on forced marriages over time and space.

I believe that this will require more digging in the archives, more case law and court record analysis, and more oral history. The oral history approach to this project provided me with the invaluable opportunity to learn about experiences and collect intimate, detailed data on forced marriage cases that would have been impossible to collect had I only sought out written sources. Examples of these enriching contributions can be found throughout this study. While it was possible to include a number of quotations and excerpts of testimonies, I was unable to incorporate all of the information I learned, or to share many of the revealing occurrences that provided me with insights into the struggles and triumphs of those impacted by, and working to end, forced marriages. These revealing instances consisted of heated, earnest debates between service providers about how best to proceed; a survivor naming her daughter after a hero in her country who courageously spoke out against forced marriage; concerned telephone calls and exchanges when one victim's family was in serious danger abroad because she had fled a forced marriage; the laughter shared by all at a meeting of the Network of Agencies

Against Forced Marriage when Deepa Mattoo shared Jasvinder Sanghera’s astute strategy to advise persons in forced marriage situations to “put a spoon in your knickers” so they would set off metal detectors when going through airport security so they may then inform officials they do not wish to leave the country; witnessing Amina open an education savings plan for her daughter and her happily telling her she would have a choice to marry whoever she wished because education would give her the freedom her mother was not afforded; the crushing loss of funding to an important initiative raising awareness about forced marriage in Ontario; survivor Jamila explaining the joy of being free to have her own place to live and buy her first new clothes; and male survivor Bruce describing how special it was to experience true, deep trust, equality, respect, validation, freedom and love in a consensual marriage.

These examples serve to reveal the shared humanity of the diverse individuals whose stories constitute an important part of our collective history of forced marriage. Based on them and the findings in this thesis, I disagree with the widely held, overly essentialist “protection” and “oppressive” theories on the origins of marriage in general and rationales for forced marriage in particular. Like Coontz, my research has led me to take issue with both the theory that “marriage was invented so men would protect women,” and, on the other end of the spectrum, the theory “that it was invented so men could exploit women.”³ I believe these two theories are not mutually exclusive – in other

³ Coontz, 6. Flaws in the “protection” theory have been noted since the 1970s. As Coontz stresses, “The story that marriage was invented for the protection of women is still the most widespread myth about the origins of marriage.” (35) The “oppressive” theory first advanced by feminists and anthropologist Claude Levi-Strauss who declared marriage alliances were “not established between men and women, but between men *by means of women*” has more currency due to the vast body of evidence of men trading,

words, that the institution of marriage has been used to both “protect” and “oppress.” On the whole, like macro-historical research on marriage, I have found that forced marriages are rarely about the well-being of one or both of the spouses in question. Rather, these marriages are generally premised on the interests of the collective group – on how societies, families and community members attempt to exercise power and control in the regulation of sex, child rearing, labour, day-to-day tasks, economic and social life.

Forced marriage must continue to be researched and theorized in multiple, multi-disciplinary ways. We must grapple with why group interests are privileged at the expense of the rights and wellbeing of individuals; with why parents, family and community members perpetrate forced marriages when seeking to “protect” their men, women and children; and with why both men and women exercise power, force, control and physical/emotional violence to force females and males into marriages to “oppress” and exploit them. The marginalization of voices that do not fit dominant narratives and the role of race are two particularly significant issues that require further theorization within work on group interests that trump the rights of individuals in forced marriage situations. As we have seen, the construction of a standard profile of a forced marriage victim by the media and early, arguably flawed research⁴ on forced marriage has impacted how we understand the issue. Cases that have not been privileged (i.e. involving men, Christians and long-standing Canadian citizens) reveal things that mainstream

abusing and exploiting women under the guise of marriage. However, a significant number of exceptions have also called this theory into question (42-44).

⁴ See, for example, MacIntosh, *Gender culture religion*, 44.

representations of the issue have not. Further research must also avoid the tendency to seek linear narratives and simplistic understandings.

This study opened with a quote articulated by Lucretia Mott in 1849: “In the true married relationship, the independence of husband and wife will be equal, their dependence mutual, and their obligations reciprocal.” The story in this thesis picks up when consent was already a requisite element of marriage and forced marriage was deemed unacceptable. As in other countries, leading up to and between 1948 and 2008, the ability, and then right to choose one’s marriage partner theoretically, legally, socially and rhetorically, became increasingly possible in Canada. Yet, as argued in this thesis, laws that capture forced marriages proved no obstacle to forced marriages occurring in Canada, and the existence of the rhetorical freedom to consent in marriage remained fundamentally constrained in reality. Despite evidence to the contrary, international, national, provincial and local Canadian officials across sectors have tended to focus on forced marriages as merely an issue in the international development arena OR to target three specific domestic groups as exceptional problems through uneven patterns of “othering”. Between 1948-2008, these three targeted groups were Aboriginals (especially through the persistence of xenophobic and racist fur trade tropes and colonial discourses), immigrants (as unassimilated threats to Canada’s unproblematic marriage model) and Muslims (as ‘uncivilized’, ‘barbaric’ extremists). As demonstrated and argued in the body of this study, the history of forced marriage in Canada as a source, transit and destination country was far more complex.

In the 1970s, Canadian feminists, in advocating for equality for women, recognized the undeniable need to reform marriage, the institution they saw as arguably the chief perpetrator of patriarchy. They perhaps took inspiration from the premise set forth by Elizabeth Cady Stanton, a contemporary of Lucretia Mott. In her letter to Susan B. Anthony in 1853, Stanton wrote: “I feel, as never before, that this whole question of women’s rights turns on the pivot of the marriage relations, and mark my word, sooner or later, it will be the topic for discussion.”⁵ Over the past 162 years, Canadians and global actors have exchanged ideas, participated in events, actions and conversations involving forced marriage that have indeed centred on marriage relations. Their actions challenge the rhetoric of a past filled with “good marriages” in Canada, raise fundamental questions surrounding valid consent to marry, reveal the persistence of patriarchy in action through marriage, and the silencing of voices calling for reform to the Canadian marriage model. In the wake of 1967-68 divorce law reforms and feminist work that brought to light many of these concerns, particularly inequalities and violence in forced marriages and marriages as a whole, some Canadians rejected marriage all together, deeming it to be slavery (in both rhetorical and literal senses), and argued for its abolition. Indeed, as argued in this dissertation, from the 1970s onwards, Canadians from across sectors have increasingly spoken out against forced marriage. They demanded that the Canadian state “have business in the marriages of the nation”, which led to reforms via the 1985-1986 Divorce Law, grassroots projects and activism in the 1990s, and, finally, to Canada’s 2008 conference on forced marriage – our “light bulb” moment.

⁵ Chapman and Gates, *Women into Wives*, 296.

As we have seen, despite the history of Canadians contesting forced marriages since Confederation and evidence of the complexities involved in forced marriage situations, narratives of erasure and of oversimplification continue to prevail. I therefore intend to pursue two post-doctoral research projects that build on this project. The first will be an in-depth exploration of forced marriage cases that exist in police, legal clinic and front-line responder records, but have not been accessed or consulted because they have never found their way into formal reports or archival data bases. I will go “behind the scenes” to examine phone calls to first responders, meetings with lawyers, and domestic assault trials.⁶ The second research project I have in mind is an examination of forced marriages perpetrated within the context of Indian Residential Schools (IRS) that I uncovered while completing work on this dissertation. The cases I found during my preliminary research on this phenomenon suggest that more cases exist, which merit academic study and analysis. To date, forced marriages perpetrated by IRS officials have not been addressed, nor were they a focus of the Truth and Reconciliation Commission of Canada, for whom I worked as a Researcher in 2014-2015 as part of Library and Archives Canada’s Document Disclosure Project.

Canada’s forced marriage history matters as a case study of forced marriage in the transnational, global world. This dissertation is a response to the need to address the incomplete record of the past. It has provided conceptual clarity when it comes to defining cases of marriage without consent through a reliance on case law and legal

⁶ For this project, I take inspiration from Ruthy Lazar, “Negotiating Sex: The Legal Construct of Consent in Cases of Wife Rape in Ontario, Canada”, *Canadian Journal of Women and the Law*, Volume 22, Number 2, 2010, pp. 329-364.

sources, and has helped move Canadian history in important ways: it has inserted analysis of forced marriages in Canada into the bodies of work on marriage and world-wide manifestations of slavery. Further, the oral history aspect of this forced marriage history from below includes voices and accounts for experiences that were previously not available in the historical record or mainstream sources.

In the words of Eric Williams, “historians neither make nor guide history. Their share in such is usually so small as to be almost negligible. But if they do not learn something from history, their activities would then be cultural decoration, or a pleasant pastime, equally useless in these troubled times”.⁷ This history project on forced marriage in Canada matters for the world of academia and our society, which until now, have treated this issue as it manifests in Canada as if it is an isolated, archaic phenomenon, casting the survivors and others who have spoken out or been affected as merely “backward /uncivilized Indians” “bitter feminists,” “uncultured,” “brown,” “black,” “immigrants,” and/or “religious fanatics.” Although no national action plan to address forced marriage exists, government officials, law and policy makers are steadily facing the fact that the question of what do about forced marriage is not going away. How Canada proceeds remains to be seen.

As action is taken, the current prevailing discourse on forced marriage (most recently apparent in the “barbaric cultural practice” language used in Bill S-7), which is indicative of anti-immigrant and racist/xenophobic assumptions, must not be the only

⁷ Eric Williams, *Capitalism and Slavery Capitalis* (Chapel Hill : The University of North Carolina Press, ©1944, 1994), 212.

narrative told. Rather, as has been argued in this thesis, we must contend with the complexity of this issue and address the structural factors driving forced marriages, namely inequality, the operation of power, and the suppression of individual rights. We must understand how we have arrived at the present moment, and what is really at stake – the right to choose who/if/when to marry at the foundation of human dignity, freedom and equality for all. Only then will a strategic, effective, evidence-based public policy response be possible so that, like Nazli, Canada can come out of the chrysalis. In her words, “The choice is ours.”⁸

⁸ Nazli, *Interview by Author*, August 20, 2012.

Epilogue

A. Developments since 2008

Since 2008, the end date of this study, there have been a number of developments with respect to forced marriage cases and practices in Canada. Following the first national conference held by SALCO on the issue in June 2008, SALCO received additional funding from the Ontario Trillium Foundation to create a training module on forced marriage, and a tool kit for service providers. In 2010, SALCO launched www.forcedmarriages.ca, a website with information for Canadians and stakeholders across the country. Over 150 forced marriage training sessions have since taken place for law enforcement, social workers, government agencies, front-line service providers and at-risk youth.

Since 2010, the national Network of Agencies Against Forced Marriage (NAAFAM) has met on a bi-annual or quarterly basis, allowing for information sharing, case-specific consultations, community development, discussions on possible law reform, and the establishment of best practices and partnerships across Canada. With the support of a Status of Women grant, Shirley Gillett and colleagues created the www.fmp-acsa.ca/ awareness and education initiative through Agincourt Community Services, held a series of eight spoken word art workshops, and piloted ESL classes with a focus on forced marriage for which a documentary film was developed. Additionally, with support from the Ministry of the Attorney General's office, SAWC published a report on the intersection between forced marriage and human trafficking. Unfortunately, funding for

the initiatives led by Gillett and SAWC was not renewed, and these initiatives are no longer active.

In October 2012, SALCO held a second national conference focused on existing resources in Canada to address forced marriage, including: “legal resources, [the] legislative context, health resources, and federal government policy as it pertains to ... human trafficking, immigration, visa post intervention”.¹ Resources and services in Ontario, where the most robust initiatives have taken place to date, were discussed and shared by attendees. So too were gaps in service provision and government policies. After publishing its forced marriage report involving 219 clients served by 30 agencies over a two year period, SALCO received funding to explore legal reform options.² Since then, the federal government of Canada has denounced child marriage abroad, participated in combatting forced marriage as part of UN efforts, acknowledged the existence of the practice in Canada, and asserted its commitment to discuss solutions to end forced marriage in Canada.³ However, this alleged commitment to consultation has been put into question. As noted in the dissertation, findings in SALCO’s research report were misused and ignored when the federal government introduced Bill S-7 to criminalize forced marriage in 2014, going against SALCO and NAAFMs’ clear recommendation not to pursue criminalization.

¹ SALCO, *The Incidence of Forced Marriage*, 2013, p. 3. A youth-led story book initiative with forced marriage scenarios depicted in a comic book style was also published.

² As explorations on possible legal approaches begin, we can learn from other countries. See, for example, Ratia and Walter, *International Exploration on Forced Marriages*, 2009.

³ The Department of Justice Canada has included content on forced marriage in the following materials: “Child Abuse is wrong: What can I do?”, “Abuse is wrong in any language” and “Bon Voyage, But...Essential Information for Canadian Travellers”.

B. Policy Recommendations

“Put a spoon in your knickers” – Jasvinder Sanghera

As a last resort, some Canadians in forced marriage situations have put a metal spoon in their undergarments in the hope of being stopped by airport security officials in order to alert them of their situations before they board planes taking them to their forced marriage ceremonies. While clever and successful in some cases, this last minute measure is far from ideal for obvious reasons.

This study illuminates the need for proactive protocols and policies to prevent forced marriage situations in Canada and provide services and resources for victims. In light of its findings from 1948 to 2008, the following policy recommendations are suggested:

1) A Nation Action Plan to combat forced marriage that will:

- Prioritize survivor/experiential voices and consultation with at-risk communities, the NGO sector, law enforcement and researchers.

2) A long-term nationally funded multidisciplinary task force (like NAAFAM) with federal government participation from CIC, DFAIT and the IRB to:

- Carry out the National Action Plan
- Call for reforms to Bill S-7

AND:

- Coordinate services and initiatives;
- Establish uniform consular services for persons in forced marriage situations involving Canada as a source, transit or destination country;
- Develop regional teams and local protocols, including pre- and post- safety protocols for persons in forced marriage situations, shelters and agencies, and a system to vet service providers;
- Establish Provincial Victim Funds;
- Institute system changes across sectors and jurisdictions;

- Mandate standardized training for social workers, judges, CBSA, RCMP, local police, legal clinics, consular officials, educators, health care providers, and service providers;
- Fund wrap-around services and in-house programs at second-stage safe houses and shelters;
- Develop a youth strategy;
- Develop an adult strategy;
- Train judges and crowns and work in collaboration with Law Societies;
- Fund a large-scale, national publicity campaign to educate the general public about forced marriage, how to identify signs of forced marriage, and how to report potential cases;
- Create or insert forced marriage into the curriculum for all streams of students and ESL programs;
- Consider the feasibility of developing Mobile Response Teams;
- Increase funding for long-term, complex investigations;
- Fund a dedicated academic research hub to develop a centralized database of forced marriage resources, standardized intake forms, issue-based research initiatives, and disseminate data and findings on an annual basis;
- Support the capacity building of service providing organizations to respond to the needs of persons in forced marriage situations;
- Support and encourage social marketing campaigns with business and industries;
- Create more awareness about existing translation services available;
- Liaise with long-term healing, counselling, trauma-informed and culturally relevant programs; and
- Encourage funders of granting bodies and foundations to fund long-term projects.

Additionally, it is critical that we take into account

- The unique needs of men and boys in forced marriage situations;
- Potential service gaps for 16 and 17 year olds in provinces where services are not available to them under child welfare law mandates;
- The whole person – from a biological, social and psychological perspective. Individuals in forced marriage situations need to know they are valued by their religion/community and each case is different, which means it's important to have individual case conferencing, to integrate culture and spiritual concerns.
- Forced marriage cases hurt us all. Proactive intervention programs are essential, as they help prevent the consequences of forced marriages from the personal, fiscal and general societal points of view alike.⁴

⁴ A 2004 cost-benefit study carried out in Manitoba estimated the average total costs per case of sexual exploitation from personal, fiscal and general societal points of view to be \$64,547. Linda DeRiviere, Ndaawin “Key findings: Cost-Benefit Study”, October 15 2004. The report concluded that funding costs would be recouped if Ndaawin prevented fewer than two youth from being exploited.

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Appendices

Appendix I – Sample Access to Information Request



Info Source

Access to Information Request Form

Protected when completed

For official use only

Access to Information Act

Step 1
Determine which federal government institution is most likely to have the information you are seeking. Decide whether you wish to submit an informal request for the information or a formal request under the Access to Information Act. If you wish to make an informal request, contact the appropriate institution. The address can likely be found in *Info Source* publications which are available across Canada, generally in major public and academic libraries, constituency offices of federal Members of Parliament and most federal government public enquiry and service offices.

Step 2
To apply for information under the Access to Information Act, complete this form or a written request mentioning the Act. Describe the information being sought and provide any relevant details necessary to help the institution find it. If you require assistance, refer to *Info Source (Sources of Federal Government Information)* for a description of program records held by the institution or contact its Access to Information Coordinator.

Step 3
Forward the access request to the Coordinator of the institution holding the information. The address is listed in the "Introduction" to *Info Source*. Enclose a \$5.00 money-order or cheque payable to the Receiver General of Canada. Depending upon the type or amount of information being sought, you may be asked to authorize further charges.

Step 4
When you receive an answer to your request, review the information to determine whether you wish to make a further request under the Act. You also have the right to complain to the Access to Information Commissioner should you believe that you have been denied any of your rights under the Act.

Federal Government Institution
Immigration and Refugee Board

Provide details regarding the information being sought
Please send me statistics for the following:

1. The total number of cases that have indicated a forced marriage since the creation of the IRB in 1989.
2. The number of cases citing a forced marriage that have been rejected.
3. The number of cases citing a forced marriage that have been successful.

Method of access preferred

Receive copies of originals
 Examine originals in government offices

Name of applicant
Karlee Anne Sapoznik, PhD (ABD) York University

Street, address, apartment
613 Glenholme Avenue

City or town
Toronto

Province
Ontario

Postal Code
M6E 3G7

Telephone number
647-637-6350

This request for access to information under the Access to Information Act is being made by

a Canadian citizen, permanent resident or another individual present in Canada, or
 a corporation present in Canada

Karlee Sapoznik
Signature
November 20, 2013
Date

The personal information provided on this form is protected under the provisions of the Access to Information Act and the Privacy Act.

Canada

TBC 350-57 (Rev. 2006/09/19)

Appendix II – Sample Questionnaire

**QUESTIONNAIRE FOR SURVIVORS / PERSONS WHO HAVE EXPERIENCED
FORCED MARRIAGE**

Basic Chronological and Biographical Data

Name: _____

Date of Birth: _____ Age: _____

Ethnicity: _____

Religion: _____

Place of Birth: _____

Current Location/Residence: _____

How / with whom did you migrate to Canada? (if applicable): _____

Countries in which you have citizenship / permanent residency or refugee status
(Only if this information is not too sensitive): _____

Education: Did you go to school? If so, where and what year did you graduate?
Middle School _____ Year: _____
High School _____ Year: _____
College/University _____ Year: _____

Do you have a career / profession? _____

Do you have any volunteer affiliations? _____

Marital Status: _____

Do you have children? If yes, how many? _____

QUALITATIVE QUESTIONS

Section 1 – Attitudes and Expectations

1. When you were growing up, what expectations related to marriage did your family and community have?
2. What did you think marriage was? Now what do you think marriage is?
3. What, in your opinion, makes a good/bad marriage?

Section 2 – Big Picture Factors, Opinions and Responses

4. We hear a lot about so-called “forced marriages” in Canada. What does that mean to you? What do you think of as “forced marriage” in Canada? Is there a difference between so-called “forced marriages” in Canada and elsewhere in the world? (i.e. in your country of origin if you were not born in Canada)
5. Do you consider marriage to be a cultural and/or religious custom?
6. Do you think consent to marriage is important? Are other factors more important?
7. What are the opinions of your parents/family? Other victims/survivors? Community members? Friends?
8. Who do so-called “forced marriages” impact?
9. Why do you think these marriages occur?
10. What factors do you think have prevented those in non-consensual situations from seeking help? When do you feel seeking help is appropriate?
11. How has this practice impacted you?
12. Are you aware of any laws on marriage? If so, are these discussed in your family / community / faith-based church / synagogue / mosque / temple?
13. Did any of the following impact your marriage?
 - Immigration
 - Refugee Status
 - Racism / xenophobia / discrimination
 - Politics
 - Economic Status
 - Culture / community
 - Religion

Section 3 – Involuntary Marriage Dynamics

14. Did you have the option to choose a “husband”/“wife”? If not, what did you do?
15. What level of education did this person attain? What type of schooling?
16. Was a marriage promise/decision carried out by this person/ their parents/ the community?
17. Was money or anything of economic value exchanged? (i.e. dowry, material goods, money, property) If so, what happened to what was exchanged?
18. Was there a religious ceremony or promise?
19. Was immigration sponsorship promised?
20. Were you happy with the choice (before, during and/or after)? Was the marriage what you expected? How did it continue/end?
21. Were you the only “wife”/”wives” of your “husband”/“husbands”? Was this both of your first marriage? If not, were you separated/divorced/widowed prior to it?
22. Did you experience violence? If yes, were police or social service providers involved or notified? If yes, was there a court case?
23. Where did this marriage occur? (In Canada / abroad)
24. Was your “husband”/“wife” from the same ethnic group?
25. Did you continue in your job or schooling after getting married? If you worked, did you have access to the money you earned?
26. Did you have any children while married? If yes, how many?
27. Did you consider seeking a separation, annulment or divorce? If yes, why?
28. Are you aware of any legal claims or cases involving marriages where there was not mutual consent?
29. Would you want your son or daughter to marry at the age when you did or in the way you or the members of the community/ family/ culture/ society you have mentioned did? Why or why not?
30. What can be done to protect victims / prevent this practice? (As a survivor, what would you like to tell other survivors/ the public/ researchers/ government/etc.?)
31. Is there anything you would like to add?

Appendix III – Ethics Approval and Certificate



OFFICE OF
RESEARCH
ETHICS (ORE)

5th Floor,
York Research Tower,
4700 Keele St.
Toronto ON
Canada M3J 1P3
Tel 416 736 5201
Fax 416 650 8197
www.research.yorku.ca

Memo

Certificate #:	STU 2011 - 069
Approval Period:	06/29/11-06/29/12

To: Karlee Sapoznik, Department of History, karleesapoznik@yahoo.ca

From: Alison M. Collins-Mrakas, Sr. Manager and Policy Advisor, Research Ethics
(on behalf of Wade Cook, Chair, Human Participants Review Committee)

Date: Wednesday 29th June, 2011

Re: Ethics Approval

Involuntary Marriage: A Canadian Case Study, 1948 to 2008

I am writing to inform you that the Human Participants Review Sub-Committee has reviewed and approved the above project.

Should you have any questions, please feel free to contact me at: 416-736-5914 or via email at: acollins@yorku.ca.

Yours sincerely,

Alison M. Collins-Mrakas M.Sc., LLM
Sr. Manager and Policy Advisor,
Office of Research Ethics

Certificate of Completion

This is to certify that

Karlee Sapoznik

*has completed the Interagency Advisory Panel on Research Ethics'
Introductory Tutorial for the
Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans (TCPS)*

Issued On: **March 21, 2011**

Appendix IV – Informed Consent Form

Principal Investigator: Karlee Anne Sapoznik, PhD Candidate, York University, Toronto.

My dissertation research examines involuntary marriage in Canada from 1948 to 2008. I am asking you to participate in this project by taking part in an interview so I can understand your views on this subject. Your interview will be part of a larger study made up of numerous sources, including books, articles, international and domestic treaties, consensus documents, archival documents, written testimonies, newspaper articles, government reports, non for profit and legal clinic archives as well as court cases. All of these sources will be cited in my doctoral dissertation and future scholarly publications.

This interview will take approximately 1.5 to 2 hours. It will take place at a time and place of your choosing. The interview will be conversational in tone, although I will rely on set questions to stimulate the discussion. There are no incentives for participating, there are minimum risks involved, and all costs will be borne by me, the researcher. Participants will be asked to voluntarily describe their life experiences. They will be given a consent form explaining in detail the risks and measures in place to prioritize their privacy and safety. Each participant will be given the option to remain anonymous, and to withdraw from the interview at any time, in which case all data generated from the interview will be destroyed.

The research project has been reviewed and approved by the Human Participants Review Committee, York University's Ethics Review Board and conforms to the standards of the Canadian Tri-Council Research Ethics guidelines'.

The decision not to volunteer will not influence the nature of the potential participants' relationship with the researchers, York University, or any other group associated with this project either now, or in the future.

PARTICIPATION: You have the right not to participate and you may withdraw from the interview at any time, upon which all data generated from the interview will be destroyed. You also have the right during the interview not to answer a question or to change your answers. I will provide you with a transcript of the interview to which you may make edits or add additional information. You should be aware that excerpts of this interview may be included in my dissertation and scholarly publications. Comments you make could become public record. The researcher may ask you for access to further information, contacts and documents. You are free to say yes or no. Your decision will not have an effect on your participation in the project or your relationship with the researcher or York University. You may put separate conditions of use on any documents and photographs which you provide to the investigator.

IDENTITY: You may choose for your participation in this study to remain anonymous. The researcher suggests you do so unless you are a public service provider or researcher. An identification key linking pseudonyms with actual identities will be held in a locked file accessible only to me as the project researcher and separate from the interview tapes and/or notes. The identification key will be destroyed by shredding at the conclusion of my own scholarly research.

If necessary, the tapes will be destroyed as a condition of anonymity. Confidentiality can only be guaranteed to the extent allowed by law.

Your signature here describes the conditions regarding your identity under which you have agreed to participate in this research project:

I, _____, agree to the use of my name for citation in the researcher's thesis as well as in any future publication.

I, _____, agree to the use of a pseudonym for citation in the researcher's thesis as well as in any future publication.

STORAGE: During the research process the interview tapes will be stored in a locked cabinet. Electronic copies of transcripts will be kept on a password-protected computer. Once the study is complete, the interview tapes will be deposited in an archive, such as the *The Harriet Tubman Research Institute for Research on the Global Migrations of African Peoples –Archives*. Once deposited in an archive they become accessible to the public. If they are not deposited in an archive all tapes and notes will be destroyed within twenty-five years of the completion of the study.

I, _____, agree to have interview tapes deposited in an archive after twenty-five years.

I, _____, wish to have all interview tapes destroyed after twenty-five years.

CONSENT: Your signature on this form indicates that you have understood to your satisfaction the information regarding participation in the research project and agree to participate as a subject. In no way does this waive your legal rights nor release the investigator, sponsors, or involved institutions from their legal and professional responsibilities. Your continued participation should be as informed as your initial consent, so feel free to ask for clarification or new information throughout your participation.

I am fully aware of the nature and extent of my participation in this project as stated above and the possible risks from it. I hereby agree to participate in this project. I acknowledge that I have received a copy of this consent statement.

Signature of participant
(or legally authorized representative)

Date

Printed name of participant

Signature of Investigator

A copy of this consent form has been given to you to keep for your records and reference. If you have further questions about this research project I can be reached in Toronto:

c/o Graduate Programme in History
2172 Vari Hall
4700 Keele Street
Toronto, ON M3J 1P3
History Department phone: 416-736-5127

Any questions about this process or about the participants rights in the study may be directed to the Senior Manager and Policy Advisor for the Office of Research Ethics (5th Floor, York Research Tower, York University, Telephone: 416-736-5914. Email: ore@yorku.ca).

Appendix V

Table - Refugee Asylum Cases Involving Alleged Forced Marriage Situations, 1989-2008

LEGEND

Citizenship and Immigration (42 cases)
Immigration and Refugee Board (32 cases)
Public Safety and Emergency Preparedness and Citizenship and Immigration (1 case)
Solicitor General of Canada (1 case)
Successful Immigration and Refugee Board cases (10 cases)
Successful Citizenship and Immigration cases (13 cases)
(*) IRB hearings that were appealed with CIC for which CIC cases are in this table (5 cases)

Case #	Decision Date	Applicant(s) name(s)	Respondent	Gender	Country of origin	Cities of residence and hearings	Decision	Case Reference
1.	June 8, 1995	Khatijabhai Vidhani	Citizenship and Immigration	Female	Kenya	Ottawa	judicial review allowed	Vidhani v. Canada (Minister of Citizenship and Immigration), 1995 CanLII 3606 (FC), [1995] 3 FC 60
2.	July 10, 1997	Unity Gwanzura	Citizenship and Immigration	Female	Zimbabwe	Brampton Toronto	judicial review dismissed	Gwanzura v. Canada (Minister of Citizenship and Immigration), 1997 CanLII 5370 (FC)
3.	March 2, 1999	Sire Berete	Citizenship and Immigration	Female	Guinea	Montreal Ottawa	judicial review allowed	Berete v. Canada (Minister of Citizenship and Immigration), 1999 CanLII 7801 (FC)
4.	November 2, 1999	Anonymous	Immigration and Refugee Board	Female	Thailand	Toronto	convention refugee	X (Re), 1999 CanLII 14662 (IRB)
5.	January 10, 2000	Anonymous	Immigration and Refugee Board	Female	Zambia	Toronto	rejected	X (Re), 2000 CanLII 21420 (IRB)
6.	July 11, 2000	Anonymous	Immigration and Refugee Board	Female	Nigeria	Toronto	convention refugee	X (Re), 2000 CanLII 21442 (IRB)
7.	September 29, 2000	Yeakut Begum	Citizenship and Immigration	Female	Bangladesh	Montreal Ottawa	judicial review dismissed	Begum v. Canada (Minister of Citizenship and Immigration), 2000 CanLII 16199 (FC)
8.	February 2, 2001	Anonymous	Immigration and Refugee Board	Female	China	Toronto Vancouver	rejected	X. v. Canada (Immigration and Refugee Board), 2001 CanLII 26949 (IRB)
9.	February	Anonymous	Immigration	Female	Lebanon	Ottawa	rejected	X. v. Canada (Immigration

	6, 2001		and Refugee Board					and Refugee Board), 2001 CanLII 26821 (IRB)
10.	April 24, 2001	Anonymous	Immigration and Refugee Board	Female	Zimbabwe	Toronto	rejected	X. v. Canada (Immigration and Refugee Board), 2001 CanLII 26967 (IRB)
11.	May 17, 2001	Salamata Sawadogo	Citizenship and Immigration	Female	Burkina Faso	Montreal Ottawa	judicial review allowed	Sawadogo v. Canada (Minister of Citizenship and Immigration), 2001 FCT 497 (CanLII)
12.	May 23, 2001	Sarah Adjoa Quaye	Citizenship and Immigration	Female	Ghana	Toronto	judicial review allowed	Quaye v. Canada (Minister of Citizenship and Immigration), 2001 FCT 518 (CanLII)
13.	May 25, 2001	Mohammad Mainuddin Sarker (husband), Nasrin Sultana (wife), and Mishkat Sarker (daughter)	Citizenship and Immigration	Male Female Female	Bangladesh	Ottawa	judicial review dismissed	Sarker v. Canada (Minister of Citizenship and Immigration), 2001 FCT 526 (CanLII)
14.	May 31, 2001	Anonymous (mother and two minor children – one boy, one girl)	Immigration and Refugee Board	Female Female Male	France (Mother) Syria (Father) France and Syria (Children)	Montreal Quebec	convention refugees	X. v. Canada (Immigration and Refugee Board), 2001 CanLII 26855 (IRB)
15.	July 31, 2001	Anonymous	Immigration and Refugee Board	Female	Kenya	Montreal	rejected	X. v. Canada (Immigration and Refugee Board), 2001 CanLII 26892 (IRB)

16.	September 28, 2001	Adeniyi Bamidele Esther	Citizenship and Immigration	Female	Nigeria	Ottawa	judicial review dismissed	Esther c. Canada (Minister of Citizenship and Immigration), 2001 FCT 1073 (CanLII)
17.	October 25, 2001	Lydia Oritseweyin mi Adodo	Citizenship and Immigration	Female	Nigeria	Ottawa Saskatoon Toronto	judicial review allowed	Adodo v. Canada (Minister of Citizenship and Immigration), 2001 FCT 1159 (CanLII)
18.	November 26, 2001	Anonymous	Immigration and Refugee Board	Female	Central African Republic	Montreal	convention refugee	X. v. Canada (Immigration and Refugee Board), 2001 CanLII 26862 (IRB)
19.	December 18, 2001	Anonymous (mother and two daughters)	Immigration and Refugee Board	Female	Guinea	Montreal	convention refugees	X. v. Canada (Immigration and Refugee Board), 2001 CanLII 26898 (IRB)
20.	December 21, 2001	Anonymous (mother, minor son and minor daughter)	Immigration and Refugee Board	Female Male Female	Guinea	Montreal	convention refugees	X. v. Canada (Immigration and Refugee Board), 2001 CanLII 26904 (IRB)
21.	March 13, 2002	Anonymous	Immigration and Refugee Board	Female	Guinea	Montreal	convention refugee	X (Re), 2002 CanLII 52643 (IRB)
22.	July 25, 2002	Yanique Nouteping Ngoyi (sister) and Guy Patrice Nouteping Mietchop (brother)	Citizenship and Immigration	Female Male	Cameroon	Montreal Ottawa	judicial review dismissed	Ngoyi v. Canada (Minister of Citizenship and Immigration), 2002 FCT 821 (CanLII)
23.	August	Anonymous	Immigration	Female	Republic of	Montreal	convention	X (Re), 2002 CanLII 52645

	19, 2002		and Refugee Board		Djibouti		refugee	(IRB)
24.	September 9, 2002	Anonymous (Female mother, female daughter, adult male brother-in-law)	Immigration and Refugee Board	Female Female Male	Zimbabwe	Toronto	convention refugees	X (Re), 2002 CanLII 52705 (IRB)
25.	October 24, 2002	Morteza Sohrabi	Citizenship and Immigration	Male	Iran	Ottawa Toronto	judicial review dismissed	Sohrabi v. Citizenship and Immigration (Minister of), 2002 FCT 1079 (CanLII)
26.	November 13, 2002	Anonymous	Immigration and Refugee Board	Female	Nigeria	Toronto	convention refugee	X (Re), 2002 CanLII 52707 (IRB)
27.	November 26, 2002	Houssainatou Diallo	Citizenship and Immigration	Female	Guinea Conakry	Montreal Ottawa	judicial review allowed	Houssainatou v. Canada (Minister of Citizenship and Immigration), 2002 FCT 2004 (CanLII)
28.	February 11, 2003	Ghahramanin ejAd Sedigheh (mother), Ladan Bozorgzad (daughter), and Niloufar Bozorgzad (daughter)	Citizenship and Immigration	Female Female Female	Iran	Toronto	judicial review dismissed	Sedigheh v. Canada (Minister of Citizenship and Immigration), 2003 FCT 147 (CanLII)
29.	April 11,	Edosa	Citizenship	Female	Nigeria	Ottawa	judicial	Adams v. Canada (Minister

	2003	Francesca Adams	and Immigration			North York Toronto	review dismissed	of Citizenship and Immigration), 2003 FCT 386 (CanLII)
30.	June 26, 2003	Akosua Afriyie	Citizenship and Immigration	Female	Ghana	Ottawa Toronto	judicial review dismissed	Afriyie v. Canada (Minister of Citizenship and Immigration), 2003 FCT 802 (CanLII)
31.	October 28, 2003	Ousmane Traore	Citizenship and Immigration	Male	Mali	Ottawa Winnipeg	judicial review allowed	Traore v. Canada (Minister of Citizenship and Immigration), 2003 FC 1256 (CanLII)
32.	March 23, 2004	Joan Wanjiru Ngugi	Citizenship and Immigration	Female	Kenya	Ottawa Toronto	judicial review allowed	Ngugi v. Canada (Minister of Citizenship and Immigration), 2004 FC 432 (CanLII)
33.	June 23, 2004	Theresa Gill	Citizenship and Immigration	Female	Zimbabwe	North York Toronto	judicial review allowed	Gill v. Canada (Minister of Citizenship and Immigration), 2004 FC 902 (CanLII)
34.	June 23, 2004	Victoria Adefunke Adewoyin	Citizenship and Immigration	Female	Nigeria	Toronto	judicial review dismissed	Adewoyin v. Canada (Minister of Citizenship and Immigration), 2004 FC 905 (CanLII)
35.	September 15, 2004	Joy Nosa	Solicitor General of Canada (with CIC)	Female	Nigeria	Mississauga (6855 Airport Road) Ottawa Toronto	application allowed	Nosa v. Canada (Sollicitor General), 2004 FC 1248 (CanLII)
36.	October 20, 2004	Sokona Diallo	Citizenship and Immigration	Female	Mali	Ottawa Winnipeg	judicial review dismissed	Diallo v. Canada (Minister of Citizenship and Immigration), 2004 FC 1450 (CanLII)

37.	October 20, 2004	Asia Gul	Immigration and Refugee Board (Immigration Appeal Division)	Female	Pakistan	Markham Mississauga North York Hospital Toronto	appeal allowed	Gul v. Canada (Citizenship and Immigration), 2004 CanLII 69591 (IRB)
38.	January 17, 2005	Petronella Eimani	Citizenship and Immigration	Female	Uganda	Ottawa Toronto	judicial review allowed	Eimani v. Canada (Minister of Citizenship and Immigration), 2005 FC 42 (CanLII)
39.	March 17, 2005	Houleymatou Sy	Citizenship and Immigration	Female	Mali	Ottawa Winnipeg	judicial review dismissed	Sy v. Canada (Minister of Citizenship and Immigration), 2005 FC 379 (CanLII)
40.	April 1, 2005	Anonymous	Immigration and Refugee Board	Female	Uganda	Toronto	rejected	X (Re), 2005 CanLII 59939 (IRB)
41.	May 5, 2005	Patricia Danso	Citizenship and Immigration	Female	Ghana	Toronto	judicial review dismissed	Danso v. Canada (Minister of Citizenship and Immigration), 2005 FC 630 (CanLII)
42.	May 30, 2005	Mohammad Jawad Irshad (brother), Nausheen Atif (female sister), Atif Qayum Khan (husband of Nausheen Atif)	Citizenship and Immigration	Male Female Male	Pakistan	Ottawa	judicial review dismissed	Irshad v. Canada (Minister of Citizenship and Immigration), 2005 FC 763 (CanLII)

43.	August 18, 2005	Mariam Abdelmouti	Citizenship and Immigration	Female	Chad	Ottawa Toronto	judicial review dismissed	Abdelmouti v. Canada (Minister of Citizenship and Immigration), 2005 FC 1130 (CanLII)
44.	September 2, 2005	Anonymous	Immigration and Refugee Board	Female	Nigeria	Toronto	rejected	X (Re), 2005 CanLII 77892 (IRB)
45.	September 13, 2005	Veronica Gathoni Kahiga	Citizenship and Immigration	Female	Kenya	Toronto	judicial review dismissed	Kahiga v. Canada (Minister of Citizenship and Immigration), 2005 FC 1240 (CanLII)
46.	September 30, 2005	Anonymous	Immigration and Refugee Board	Female	Turkey	Calgary Toronto	rejected	X (Re), 2005 CanLII 77879 (IRB)
47.	October 31, 2005	Édith Lor Djotsa	Citizenship and Immigration	Female	Cameroon	Montreal Ottawa (applicant “somewhere in Quebec”)	judicial review dismissed	Djosta v. Canada (Citizenship and Immigration), 2005 FC 1475 (CanLII)
48.	November 29, 2005	Anonymous male claimant, female claimant (wife of male), and three children (female, male and male)	Immigration and Refugee Board	Male Female Female Male Male	Kenya	Montreal Toronto	rejected	X (Re), 2005 CanLII 77837 (IRB)
49.	February	Anonymous	Immigration	Female	Egypt	Toronto	rejected	X (Re), 2006 CanLII 79998

	8, 2006	(husband and wife)	and Refugee Board	Male				(IRB)
50.	March 27, 2006	Anonymous (twin sisters)	Immigration and Refugee Board	Female Female	Zimbabwe	Toronto	rejected	X (Re), 2006 CanLII 61633 (IRB)
51.	August 28, 2006	Blessing Ngozi Otti,	Citizenship and Immigration	Female	Nigeria	St. Francis Xavier University Charlottetown Halifax Ottawa	judicial review allowed	Otti v. Canada (Minister of Citizenship and Immigration), 2006 FC 1031 (CanLII)
52.	September 12, 2006	Anonymous	Immigration and Refugee Board	Female	Nigeria	Toronto	rejected	X (Re), 2006 CanLII 80197 (IRB)
53.	October 2, 2006	Anonymous	Immigration and Refugee Board	Female	Nigeria	Toronto	rejected	X (Re), 2006 CanLII 63811 (IRB)
54.	October 11, 2006	Haji Diadama	Citizenship and Immigration	Male	Liberia	Ottawa Toronto	judicial review dismissed	Diadama v. Canada (Minister of Citizenship and Immigration), 2006 FC 1206 (CanLII)
55.	November 27, 2006	Mwape Ndina Bolognese Nkole	Citizenship and Immigration	Female	Zambia	Ottawa Vancouver	judicial review dismissed	Bolognese Nkole v. Canada (Minister of Citizenship and Immigration), 2006 FC 1433 (CanLII)
56.	January 16, 2007	Anonymous (brother and sister)	Immigration and Refugee Board of Canada	Male Female	Democratic Republic of the Congo (DRC)	Montreal	rejected	X (Re), 2007 CanLII 80676 (IRB)
57.	May 3, 2007	Oumou Touré	Citizenship and Immigration	Female	Guinea	Montreal Ottawa	judicial review dismissed	Touré v. Canada (Citizenship and Immigration), 2007 FC 479 (CanLII)

58.	July 26, 2007	Misenga Bunema (sister) and Bilolo Bunema (brother)	Citizenship and Immigration	Female Male	Democratic Republic of the Congo	Montreal Ottawa	judicial review dismissed	Bunema v. Canada (Citizenship and Immigration), 2007 FC 774 (CanLII) [*IRB January 16, 2007]
59.	August 13, 2007	Nadiath Radji (Mother), Leyla Apithy (Daughter)	Citizenship and Immigration	Female Female	Benin (mother) United States (daughter)	Montreal Ottawa Lasalle	judicial review dismissed	Radji v. Canada (Citizenship and Immigration), 2007 FC 836 (CanLII)
60.	August 14, 2007	Anonymous	Immigration and Refugee Board	Female	Republic of Guinea	Montreal	rejected	X (Re), 2007 CanLII 80566 (IRB)
61.	August 27, 2007	Anonymous (husband and wife)	Immigration and Refugee Board	Male Female	Nigeria	Vancouver	rejected	X (Re), 2007 CanLII 71040 (IRB)
62.	December 13, 2007	Azita Abdollahzadeh	Citizenship and Immigration Canada	Female	Iran	Montreal Ottawa	judicial review dismissed	Abdollahzadeh v. Canada (Citizenship and Immigration), 2007 FC 1310 (CanLII)
63.	December 21, 2007	Anonymous	Immigration and Refugee Board	Female	Nigeria	Calgary Toronto	rejected	X (Re), 2007 CanLII 80271 (IRB)
64.	January 31, 2008	Maryam Morenike Atunwa	Citizenship and Immigration	Female	Nigeria	Ottawa Toronto	judicial review dismissed	Atunwa v. Canada (Citizenship and Immigration), 2008 FC 127 (CanLII) [*IRB September 12, 2006]
65.	February 14, 2008	Anonymous	Immigration and Refugee Board	Female	Republic of Chad	Montreal	rejected	X (Re), 2008 CanLII 87596 (IRB)
66.	February	Lolade	Citizenship	Female	Nigeria	Ottawa	judicial	Adetola v. Canada

	21, 2008	Temitope Adetola	and Immigration			Toronto	review dismissed	(Citizenship and Immigration), 2008 FC 233 (CanLII) [*IRB October 2, 2006]
67.	March 18, 2008	Sayon Camara	Citizenship and Immigration	Female	Republic of Guinea	Montreal Ottawa	judicial review dismissed	Camara v. Canada (Citizenship and Immigration), 2008 FC 362 (CanLII) [*IRB August 14, 2007]
68.	June 24, 2008	Nahid Sahil (mother) Rita Sahil (daughter) Milad Sahil (daughter)	Citizenship and Immigration	Female Female Female	Afghanistan	Ottawa Toronto	judicial review dismissed	Sahil v. Canada (Citizenship and Immigration), 2008 FC 772 (CanLII)
69.	July 15, 2008	Anonymous	Immigration and Refugee Board	Female	Kenya	Toronto Vancouver	rejected	X (Re), 2008 CanLII 85859 (IRB)
70.	July 23, 2008	Anonymous	Immigration and Refugee Board	Female	China	Toronto	rejected	X (Re), 2008 CanLII 87251 (IRB)
71.	September 11, 2008	Monoara Begum	Citizenship and Immigration	Female	Bangladesh	Montreal	judicial review dismissed	Begum v. Canada (Citizenship and Immigration), 2008 FC 1016 (CanLII)
72.	September 29, 2008	Gnalen Camara	Public safety and Emergency Preparedness and Citizenship and Immigration	Female	Guinea	Montreal Ottawa	motion for a stay dismissed	Camara v. Canada (Public Safety and Emergency Preparedness), 2008 FC 1089 (CanLII)

73.	October 8, 2008	Dorothy Ogechi Okoye	Citizenship and Immigration	Female	Nigeria	Toronto	judicial review allowed	Okoye v. Canada (Citizenship and Immigration), 2008 FC 1133 (CanLII)
74.	November 17, 2008	Mariam Ahmat Mahamat Ali	Citizenship and Immigration	Female	Republic of Chad	Montreal Ottawa	judicial review dismissed	Mahamat v. Canada (Citizenship and Immigration), 2008 FC 1274 (CanLII) [*IRB Feb. 14, 2008]
75.	November 25, 2008.	Muhammad Sadiq Qarizada (Husband), Hamira Hamira (Wife), (Six Children: Alham Naveed Ahmad Omid, Redwana, Sebghatulla, Naseer Ahmad, Shahir Ahmad)	Citizenship and Immigration	Male Female Male Male Female Male Male Male	Afghanistan	Ottawa Vancouver	judicial review dismissed	Qarizada v. Canada (Citizenship and Immigration), 2008 FC 1310 (CanLII)
76.	November 26, 2008	Anonymous	Immigration and Refugee Board	Female	Chad	Montreal Toronto	rejected	X (Re), 2008 CanLII 87865 (IRB)

Appendix VI – 2008 Call for Papers for Forced Marriages Symposium

CALL FOR PAPERS
FORCED MARRIAGES SYMPOSIUM,
JUNE 4 - 5, 2008, TORONTO, CANADA

The South Asian Legal Clinic of Ontario (<http://www.salc.net>) is currently coordinating a project looking at the myriad social, political, and legal issues concerning the practice of forced or non-consensual marriages, particularly as it impacts young people. The Forced Marriages Project consists of about 20 project partners representing community organizations, policy, and social services.

An international symposium will take place in Toronto, Canada on June 4 and June 5, 2008.

We are currently accepting submissions for papers, workshops, or the presentation of personal narratives.

The working definition of forced marriages we are using is:

"Forced marriage is a marriage that takes place without the consent of one or both individuals, i.e. it does not entail free and full consent on the part of at least one of the parties. In a forced marriage, consent is extracted under duress including but not limited to: fraudulent inducement, violence, physical abuse and (especially in the case of minors) psychological/emotional manipulation."

Although all presenters will be financially compensated for their time, only a limited number of travel and accommodation subsidies are available. Please note in your submission if you would require such a subsidy.

Abstract Deadline (required): February 11, 2008.
Final Paper (if abstract accepted): March 7, 2008

Presentations can include:

- * Single papers (abstract max of 500 words)
- * Workshops (1 ½ hours in length)
- * Personal narratives regarding forced marriage

The conference will focus on the following themes and topics:

Definitions and Legal and Policy Contexts

- * Defining forced marriage/non-consensual marriage
- * The nature of consent
- * Research concerning the practice of forced marriage in Canada and/or involving Canadians
- * The causes, practices and outcomes related to forced marriage
- * International and transnational legal issues
- * Family law issues

The Social Aspect

- * Forced marriage and domestic violence
- * Forced marriage and the link to child protection
- * Social marginalization and forced marriages
- * Forced marriage from a health perspective
- * Community based responses vs. justice system responses
- * Forced marriage from a gender/feminist perspective
- * Forced marriage and youth rights
- * Issues facing LGBTQ communities and forced marriage
- * Forced marriage and disability issues

Responses

- * Research, policy and/or community models used in other jurisdictions
- * The role of the education system in prevention and intervention
- * Faith based responses

Please direct all inquiries to May El-Abdallah, Project Coordinator, South Asian Legal Clinic of Ontario - may@salc.net or phone 416-839-3763

All submissions must be submitted to may@salc.net - Submissions will be accepted throughout December 2, 2007 – February 11, 2008.

News / GTA

Victims speak out on forced marriage

When Jasvinder Sanghera was 14, her mother showed her a photo of her future husband, a man she had never even met.

By: Noor Javed Staff Reporter, Published on Thu Jun 05 2008

When Jasvinder Sanghera was 14, her mother showed her a photo of her future husband, a man she had never even met.

She had seen this kind of coercion before with her older sister Robina, 15, who had been pulled out of school in England and forced to marry a stranger in India.

Sanghera weighed her options, and chose to run away from home, fearing both the outcome of accepting the proposal and the consequences of saying no.

Her parents never forgave her. "They said to me, 'you are dead to us'," said Sanghera, now 42, who chronicles her life story in the book *Shame*.

Her story was one of many shared yesterday at the first-ever symposium on non-consensual/forced marriages in Canada, organized by the South Asian Legal Clinic of Ontario.

The symposium's focus is on monogamous marriages that occur "without the full and free will of one or more of the parties," said organizer May El-Abdallah. While the problem of forced marriages has existed for years in Canada, El-Abdallah said there has been little discussion or action on the issue.

"Informally it's probably a wider problem than most people would think," she said. Part of the problem is getting women to talk about their experiences openly, said El-Abdallah. "Women often don't know that they are victims, and they don't know where to turn," she said.

For years, Sanghera said her parents made her feel like the "bad guy" for her choice.

"The concept of *izzat* (honour) was more important to them than a daughter," she said. Sanghera established an organization called Karma Nirvana, which supports men and women who are survivors of forced marriages. They have counsellors, a helpline, and do advocacy work to increase awareness.

England already has a forced marriages unit that aims to prevent British nationals from being forced into marriages overseas. She believes Canada needs to do more. "These communities who are committing these crimes believe they can get away with it because no one is policing it."

The symposium continues today.