Study recommends repealing polygamy ban in Canada

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OTTAWA -- A new study for the federal Justice Department says Canada should get rid of its law banning polygamy, and change other legislation to help women and children living in such multiple-spouse relationships.

"Criminalization does not address the harms associated with valid foreign polygamous marriages and plural unions, in particular the harms to women," says the report, obtained by The Canadian Press under the Access to Information Act.

"The report therefore recommends that this provision be repealed."

The research paper is part of a controversial $150,000 polygamy project, launched a year ago and paid for by the Justice Department and Status of Women Canada.

The paper by three law professors at Queen's University in Kingston, Ont., argues that Sec. 293 of the Criminal Code banning polygamy serves no useful purpose and in any case is rarely prosecuted.

Instead, Canadian laws should be changed to better accommodate the problems of women in polygamous marriages, providing them clearer spousal support and inheritance rights.

Currently, there's a hodgepodge of legislation across the provinces, some of whom give limited recognition to foreign polygamous marriages for the purposes of spousal support. Some jurisdictions provide no relief at all.

Chief author Martha Bailey says criminalizing polygamy, typically a marriage involving one man and several wives, serves no good purpose and prosecutions could do damage to the women and children in such relationships.

"Why criminalize the behaviour?" she said in an interview. "We don't criminalize adultery.

"In light of the fact that we have a fairly permissive society, why are we singling out that particular form of behaviour for criminalization?"

Instead, there are other laws available to deal with problems often associated with polygamous unions, which are not legally recognized as marriages in Canada.

"If there are problems such as child abuse, or spousal abuse, there are other criminal provisions or other laws dealing with those problems that certainly should be enforced," Bailey said.

The Justice Department project was prompted in part by an RCMP investigation into the religious community of Bountiful in Creston, B.C., where polygamy is practised openly.

The British Columbia government has long been considering whether to lay charges under Section 293.

But the project was also intended to provide the Liberal government with ammunition to help defend its same-sex marriage bill last spring.

Opponents claimed the bill, now law, was a slippery slope that would open the door to polygamy and even bestiality.

Another report for the project, also led by two Queen's University professors,
dismisses the slippery-slope argument, saying that allowing same-sex marriages promotes equality while polygamous marriages are generally harmful to women's interests and would therefore promote inequality.

Liberal Justice Minister Irwin Cotler said he has seen only a summary of the research reports, but already rejects lifting the criminal ban on polygamy.

'At this point, the practice of polygamy, bigamy and incest are criminal offences in Canada and will continue to be,' he said from Montreal.

'These reports will become part of the knowledge base on this issue and will be taken into account.'

The Bailey report, consistent with other research for the project, also concludes the courts might well rule that Canada's law banning polygamy is a violation of Canada's constitutional guarantee of freedom of religion.

But Section 293 would survive such a challenge because the harm to women and children in many polygamous marriages is well documented abuse, poverty, coercion, health problems and the limit to religious freedom would be considered "reasonable," as allowed under Section 1 of the charter.

Although the Bountiful case raises immediate issues, Canada is also faced with a rising tide of immigration from Africa and the Middle East, where polygamy is legally and religiously sanctioned. Immigration officers can refuse entry to individuals practising polygamy.

Bailey said Canada should nevertheless offer some recognition to polygamous marriages that are legally valid in foreign countries to help protect women's rights here.

Another paper for the project, by the Alberta Civil Liberties Research Centre, urges British Columbia to proceed immediately with a prosecution in Bountiful.

'Based on the harms associated with polygamy as it is practised in Bountiful, there do not appear to be any alternatives to prosecution, however difficult it may be.'

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