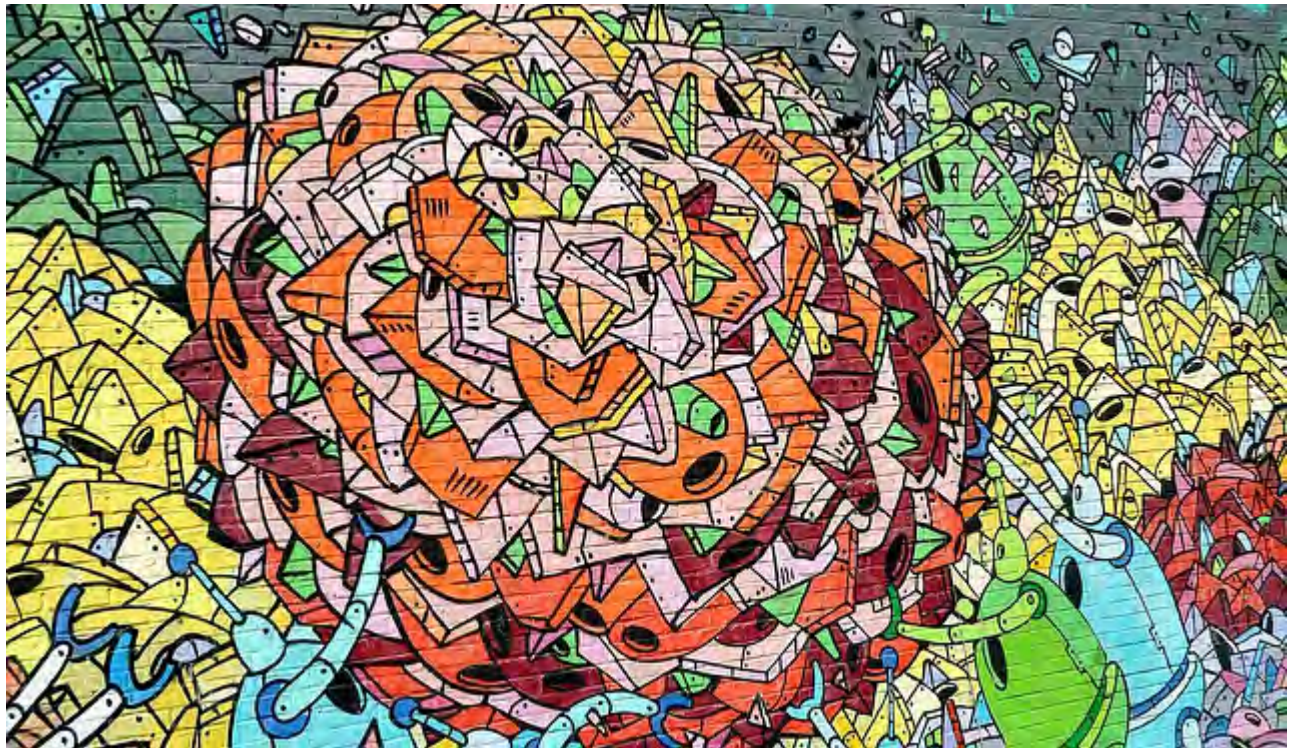


Youth Agency and the Culture of Law



Revised October 2015

Table of Contents

Preface	5
Part I: Teachers Guide	9
Introduction	10
Model I (2-3 Classes)	12
Model II (5+ Classes)	35
• Lesson 1: Forced Marriage	35
• Lesson 2: Law's Culture of Youth Agency	35
Model III (Variable Class Time)	39
Part II: Resources	40
Age of Majority and Age-Based Laws in Canada	41
History of the Age of Majority	43
International Law and Youth Agency:	47
The Age of Majority in Canadian Provinces	48
• <i>Fitzgerald v Alberta:</i>	
Should the legal voting age be lowered to 16?	50
Challenges to Age-Based Laws: Consent to Medical Treatment	60
• <i>Manitoba (Director of Child & Family Services) v C(A)</i>	60
• Ontario	73
• Makayla Sault	76
Key Terms	79
Guardianship	80
What does it Mean to be the Guardian of a Minor?	81
History of Guardianship in Ancient Rome: Tutorship and Curatorship	82
• Children Below the Age of Puberty	83
• Children Between Puberty and the Age of Majority	84
• Women in Ancient Rome	85
• Mentally Incapable Adults	85

Guardianship in Canada	89
How do the Guardian's Responsibilities Change as a Child Gets Older?	96
• <i>Manitoba (Director of Child & Family Services) v C(A)</i>	96
• Ontario	100
• Makayla Sault	101
Substitute Decision-Making for Incapable Adults	104
<i>E. (Mrs.) v. Eve</i>	106
Key Terms	112
Minimum Age of Marriage	113
Age of Marriage Across Canada	122
Additional Requirements for Marriages Below the Full Age of Marriage in Ontario	123
• <i>Evans (Re) and Fox v Fox</i>	125
Additional Requirements Below the Full Age of Marriage in Other Provinces	131
<i>A(E) (Next Friend of) v Manitoba (Director of Child & Family Services) and J v J</i>	135
Key Terms	146
Forced Marriage	147
Can you be Forced to Marry?	150
Against their Will: Inside Canada's Forced Marriages	155
• Lee Marsh	155
• Antua Petrimoulx	158
• Elizabeth in Hamilton	159
• Lev Tahor, An Ultra-Orthodox Hasidic Jewish Group	164
• Key Background Information	164
On It's My Choice: Who, If, When to Marry	177
Leaving a Forced Marriage	184
• <i>S(A) (bride) v (S(A) (groom)</i>	185
Key Terms	190

Emancipation or Leaving Home	191
Leaving the Care of your Parents	194
What Does it Mean to Voluntarily Withdraw from Parental Control?	196
• <i>Letourneau v Haskell</i>	196
Choosing Which Parent to Live With	200
Child Protection and Children Under 16 Years of Age	200
How does the Legal Situation for Minors Between 16 - 18 Compare with the Legal Situation for Minors Under 16 years of Age?	204
• <i>Children's Aid Society of Peel v S(P)</i>	205
Conclusion	209
Key Terms	211
Part III: Materials and Further Resources	212
Options and Resources	213
• What can you do...	213
• If you are facing pressure to marry or are in a forced marriage?	213
• If you are being forced to travel abroad, or think that you may be forced to marry while abroad:	213
• Additional online resources:	214
Graphic Novel: <i>It's My Choice: Who, If, When to Marry?</i>	215

Preface

“Youth Agency in the Culture of Law” is a curriculum whose inspiration arose out of increasing concerns in the Greater Toronto Area about what is often called “forced marriage”. Forced marriage is easier to define in the abstract than to identify when it occurs in any particular instance. Generally it occurs when someone is compelled to marry someone against his or her will. The compulsion or coercion might come from parents or broader kinship networks. Forced marriage is distinguished from “arranged marriage” in that the latter, while often involving parents and kinship networks, is premised upon the person marrying having the final say of who he or she chooses to marry. In short, the most salient and significant feature of forced marriage is that the person getting married has not given his or her consent.¹ Where this definition becomes problematic is determining who has the capacity to give consent, and more importantly, what forms consent (or its absence) might take. Is silence evidence of consent or its absence? How does the cultural context inform whether someone consents or not? If someone’s community or family context so strongly frames the practice of “forced marriage” as to render the practice normal or simply “what has always been done”, what would consent look like in that context?

At the time of drafting, various countries have adopted legislation criminalizing forced marriage, with the implication of sociologically criminalizing communities that are often affiliated with that practice, in particular the South Asian community.² Criminal legislation and similar forms of state regulation provided immediate satisfaction that something is being done. But their short-term gains are offset by the fact that they are heavy-handed instruments that reflect short-term political visions often framed by election cycles rather than a longer-term interest in civic engagement with communities, or educational development across different sectors of society.³ This curriculum project is, in large part, a response to such political tactics in the hope of highlighting the need for situating a practice like forced marriage within a broader analysis of the cultural content of Canadian law on youth and

1. For an important online resource on forced marriage, visit <http://www.forcedmarriages.ca>

2. One example is the Government of Canada’s Bill S-7 introduced in 2015 and entitled *Zero Tolerance for Barbaric Cultural Practices Act*, which amended various federal statutes, including the Criminal Code, to address the phenomenon of forced marriage.

3. For a critique of such legislation, see Sherene Razack, *Casting Out: The Eviction of Muslims from Western Law and Politics* (Toronto: University of Toronto Press, 2008).

their capacity to consent to a range of civic activities.

“Youth” is an ambiguous category in terms of its legal meaning. The law generally creates a bright-line dividing minors from those who have reached the age of majority, which is defined differently across jurisdictions, but is often designated as eighteen (18) years of age. Those below 18 are minors and so do not have full legal capacity, despite the fact that they may be citizens of the state. Not all minors, though, are the same. There is a chasm of difference between a six year old and a sixteen year old, and the law does not ignore that difference. But how the law takes the difference into account, for what purposes, and why, give content to what this curriculum considers the law’s culture on youth agency and civic participation. The extent to which a high school teenager may or may not have certain capacity to engage in legally regulated activities speaks volumes about how the law understands, appreciates, and represents what it means to be a teenager in what many might view as a particularly precocious age range.

To understand the law’s culture of youth agency and civic engagement, this curriculum introduces students to three important legal concepts that inform legal debate about youth agency under the law. The three concepts are: age of majority, guardianship, and minimum marriage age. These three legal concepts have been the subject of various legal disputes, forcing the judiciary to explain why these concepts are important, and what they imply about the capacity of minors to make choices for themselves and exercise a robust form of citizenship and/or legal capacity. From a pedagogic perspective, these legal concepts offer three axes around which students can then address more provocative topics such as forced marriage.

These three concepts offer the broader legal context in which this curriculum situates the issue of forced marriage and conversely emancipation. For those new to the issue of “forced marriage”, the idea of being able to choose one’s marital partner may be a taken-for-granted assumption. That someone (even a classmate) might be forced to marry someone without his or her consent might provoke retorts such as “Why didn’t/can’t you just say no?” Part of the larger coercive context of forced marriage is the fear (whether real or imagined) that to say “no” is effectively to exit the family, and all the supports it provides (economic and otherwise). But suppose one were to simply say “no” when faced with the possibility of forced marriage? What will happen to that person? And more to the point, what will the law do for that person,

especially if that person is a legal minor who is viewed under the law as having limited legal capacity? The discussion of emancipation is meant to reveal the challenges posed by the law's culture of youth when faced with teenagers who feel compelled to leave the custodial care and comfort (economic and otherwise) of their family. To couple both of these topics in this fashion highlights the larger context of forced marriage in light of the law's culture of teenagers who have not yet reached the age of majority.

This curriculum was inspired by the ongoing debate and discussion on forced marriage that has been spearheaded by the South Asian Legal Clinic of Ontario (SALCO). SALCO has been a national leader tracking incidents of forced marriage, and enhancing the capacity of various NGOs, educational institutions, and government agencies on this complex issue. The University of Toronto provided the institutional home for the development of this curriculum. Pamela Klassen and the Religion in the Public Sphere Program provided early incubation for this project to take shape. The Faculty of Law and its then-dean Mayo Moran provided initial financial support for the research and development that gave important content to this curriculum. The Factor-Inwentash Faculty of Social Work and its dean Faye Mishna provided important funding for hiring an exceptional curriculum drafter, Persia Etemadi, who brought her talents to bear in every part of this curriculum. Dean Mishna also hosted a community forum on the curriculum which allowed us to ensure the curriculum would meet the needs of frontline workers in different communities affected by forced marriage. Sarah Pole, Director of Law in Action Within Schools (LAWS) hosted a teacher focus group to review the curriculum in order to ensure its usefulness and effectiveness for classroom purposes. Lastly, the project would not have come to fruition without the generous support of Canada's Justice Department, whose Family, Youth and Children section (and in particular Ms. Hoori Hamboyan) has been an ongoing source of encouragement. We are also grateful to *Maclean's* Magazine for providing permission to reproduce its article on forced marriage as part of this curriculum's resources for educators and students. These institutions and leaders cultivated an important space from which this curriculum could come into existence, and to them we owe a debt of immense gratitude.

A curriculum project such as this is a team effort, and the team behind this project consisted of highly talented and dedicated individuals who appreciated from the outset both the limits of law and the complexity of designing a pedagogic intervention that, in the long term, will foster learning and dialogue

on the difficult and painful topic of forced marriage. Jenna Preston, now a practicing family law lawyer, provided extensive legal research on the legal concepts of age of majority, minimum marriage age, guardianship, and emancipation. Her tireless efforts yielded rich results that appear in the pages of this curriculum. Persia Etemadi was the principal drafter of this curriculum. For two years, she patiently devoted her attention to this project, working and reworking drafts in light of ongoing consultations with curriculum consultants, teachers groups, and community stakeholders. This project would not exist without the work by both Jenna and Persia; they are the heart and soul of this project. Stephen Blair provided helpful research from an education perspective in the initial stages of the project. We were extremely fortunate to bring Allan Hux out of retirement to advise us on this curriculum. Allan's professional career has been devoted to enhancing the capacity of teachers and the experience of students in the classroom. Whether at the Toronto District School Board or in his own capacity as a curriculum designer, Allan has a reputation for excellence, commitment to teacher development, and support for the classroom experience. Allan reviewed every part of this curriculum to ensure its effectiveness in the classroom. He also beta-tested an early version of the curriculum at the 2014 OHASSTA conference, which generated constructive feedback to enhance the final version. Deepa Mattoo of SALCO supported this curriculum at the outset. Thanks to her and the efforts of SALCO, we are able to include as part of this curriculum the impressive graphic novel that SALCO developed to create a climate for productive dialogue and conversation on forced marriage.

Finally, we are thankful to the teachers, academics, community members, and frontline workers who showed an interest in the project, attended our workshops and forums, and provided thoughtful feedback that has shaped the development of the curriculum. Our understanding of the issues presented in the curriculum has been enhanced by their involvement.

Dr. Anver M. Emon
Director, Curriculum Project
Professor and Canada Research Chair in Religion, Pluralism and the Rule of Law
Faculty of Law
University of Toronto

Youth Agency and the Culture of Law

Part I: Teachers Guide



Teacher's Guide:

Youth Agency in the Culture of Law

Introduction

The curriculum on “Youth Agency and the Culture of Law” comprises 5 documents that allow students and community members to explore legal tropes about youth and agency in Canada’s legal culture, and their implications for reflecting on decisions regarding marriage and emancipation. These documents will complement the graphic novel, **It’s My Choice: Who, If, When to Marry?**, published by the South Asian Legal Clinic of Ontario and included in PDF format in Part III of this curriculum.

The resources entitled **Forced Marriage** and **Emancipation or Leaving Home** offer important sites in which the legal tropes of guardianship, minimum marriage age, and age of majority intersect. Individuals must freely enter into a marriage contract. They must genuinely give their consent and cannot be coerced. They must be of the legal age of 18 to make their own decision about entering into a marriage. Between the ages of 16 and 18 individuals need the consent of their parents to marry. However, they can voluntarily withdraw from parental control and in some risky circumstances they may constructively withdraw from parental control. In special circumstances young people under the age of 16 may marry. The resources on concepts of the **Age of Majority**, the **Minimum Marriage Age** and **Guardianship** outline the origins of these key concepts around the importance of age, maturity and capacity to make decisions in the European and Canadian contexts. References to relevant statutes and key cases set out the Canadian values and the legal reasoning that underpin the decision-making capacity of Canadian youth, their parents and guardians.

Teachers may use these documents in a number of different ways. The simplest and the least class-time intensive approach is to combine the graphic novel, *It’s My Choice: Who, If, When to Marry*, with the *Forced Marriage* handout to have the students explore this major life decision and the personal, family, cultural and legal issues that influence their environment when making a decision. This would be an appropriate place to start for teachers of Grade 11 Law and Family Studies courses that are examining family law and would take 2 – 3 classes. See the Model I lesson suggestions on these documents.

Teachers of Grade 12 Law, Grade 12 Canadian and World Issues Geography and the Equity courses would find the lesson on Forced Marriage an excellent starting point for an inquiry into human rights and international law particularly as it relates to the rights of children, youth and women.

Teachers may have students investigate the five documents sequentially and discretely or in groups simultaneously. The three models proffered will outline strategies for different approaches depending on how much time the teacher can allocate to this unit and the

pedagogic goals for the class. Teachers are invited to consult Curriculum Connections (<http://www.edu.gov.on.ca/eng/curriculum/secondary/subjects.html>) to see the overall and specific curriculum expectations that these resources help students address in 12 courses.

- Canadian & World Studies:
 - Law
 - Grade 11 – CLU3M
 - Grade 11 – CLU3E
 - Grade 12 – CLN4U
 - Geography
 - Grade 12 – Canadian and World Issues – CGW4U
- Social Sciences and Humanities:
 - Equity
 - Grade 11 – Gender Studies – HSG3M
 - Grade 12 – Equity and Social Justice: From Theory to Practice – HSE4M
 - Grade 12 – World Cultures – HSC4M
 - Family Studies
 - Grade 11 – Dynamics of Human Relationships – HHD3O
 - Grade 12 – Families in Canada – HHS4U
 - General Social Sciences
 - Grade 11 – Introduction to Anthropology, Psychology, and Sociology – HSP3U and HSP3M
 - Grade 12 – Challenge and Change in Society – HSB4U

Model I (2-3 Classes)

Lessons on the Graphic Novel, *It's My Choice: Who, If, When to Marry* and Rachel Browne's 12 Jan. 2015 *Maclean's* article, "Against their Will: Inside Canada's Forced Marriages" and the Five Youth Agency and the Culture of Law Resources

This project explores the issues of marriage and forced marriage by inviting students to examine the cultural dynamics of marriage and their rights under the *Charter*, international law and family law in Ontario.

The graphic novel, *It's My Choice: Who, If, When to Marry*, presents 3 fictional cases, "Maya and Sam", "Karine and Sheila", and "Ash," that are based on a number of true stories. These stories present brief, gripping and touching situations that will engage students. But it is important to move beyond the emotive and look at the cultural and legal context that young people and their families face in Ontario and Canada.

Rachel Browne's 12 Jan. 2015 *Maclean's* article, "Against their Will: Inside Canada's Forced Marriages" outlines examples of forced marriages in communities outside of the South Asian communities. Three individuals and 4 communities are highlighted in this article and a student handout highlights these. Browne draws on the research of Karlee Sapoznik at York University, Deepa Mattoo at SALCO, staff at the Barbara Schliker Clinic, Yegi Dadui at the Sherbourne Health Clinic and 13 other agencies in the Woman Abuse Council of Toronto. Browne offers some comments on the federal government's proposed law, Bill S-7, "Zero Tolerance for Barbaric Cultural Practices Act," and some of the criticisms of this bill. If teachers would like to vary the background of the victims of forced marriages in Canada and to have students read beyond the graphic novel, *It's My Choice*, then they may add the 3 case studies of "Lee Marsh", "Antua Petrimoulx", and "Elizabeth" in "Against their Will". To use the "Children of Lev Tahor" as a case study would require a student group to do additional research. Information is readily available on Canadian media sites. This would be a good challenge for some of the top students in the class. Teachers may decide to combine the cases from these 2 sources and assign the 2 more detailed cases ("Lee Marsh" and "Elizabeth"), from Rachel Browne's article and broaden the number of groups doing case inquiries to 5 from 3.

We have written 5 resources that present the legal context and a number of scenarios and relevant cases that will deepen students' understanding of the legal culture of youth agency in the Ontario and Canadian contexts.

1. **Forced Marriage** explores some of the legal issues raised in *It's My Choice: Who, If, When to Marry* and the *Maclean's* article "Against their Will: Inside Canada's Forced Marriages".

2. **Emancipation or Leaving Home** explores the circumstances under which children

can withdraw or be removed from the care of their parents and examine who is responsible for supporting the child: the parents, the province, or the child her/himself. Two cases and a scenario invite students to investigate the complexity of youth rights and responsibilities under this area of law.

3. Age of Majority provides a brief historical overview of the concept of “age of majority” from Roman times to the U.N. *Convention on the Rights of the Child* and then looks at cases on the right to vote and to accept or reject medical treatment.

4. Age of Marriage shows how highly regulated marriage is in law and invites the questions, why is there a minimum age and why are there exceptions? Three Canadian cases allow students to explore the rationale behind different provincial laws and exceptions on the minimum age for marriage and to consider the values that underpin the law.

5. Guardianship had its roots in Roman society and was applied to minors, women and mentally incapable adults. The principle of “best interests of the child” is important for children, youth and incapable adults. The Supreme Court of Canada set out the limits on guardians of mentally incapable adults in the *E. (Mrs.) v. Eve* case.

Lesson 1 – How do we make decisions? 2 to 3 classes

Class 1: conduct the brainstorming activities and introduce the graphic novel, ***It's My Choice: Who, If, When to Marry***

Class 2: have the student groups complete the reading of their story and report to the rest of the class.

Class 3: some classes may need part of the third period to complete the reporting. Assign and have students complete a reflection activity.

List of Student Handouts

- Factors Influencing My Decisions & Actions
- Factors Influencing Other People's Decision to Marry
- Factors that May Influence MY Decision to Marry
- Some Positive Influences from My Family & Community
- Notes on It's My Choice: Who, If, When to Marry
- Notes on It's My Choice: Who, If, When to Marry and Forced Marriage
- Notes on Against their Will: Inside Canada's Forced Marriages
- My Notes on Resources, Page 1
- My Notes on Resources, Page 2
- 5 Questions on Our Group Inquiry
- Reflection: How would you plan to talk with your parents or guardians about "marriage" and your future marriage in particular? What do you think would be their reaction to the topic?

Assessment for Learning and as Learning

Have students complete the brainstorming sheet(s).

Observe student engagement in group discussions.

Have students take notes and complete the 5 Questions on their story and the "Note Summary" sheets on the other group presentations.

Assessment of Learning

Have students complete a reflection piece on 1 of the topics suggested or on 1 topic that they suggest and that you approve.

Lesson 1 Framework

1. Invite students to brainstorm the factors that influence our decision-making processes with the following question:

What forces in society may influence and shape the ways we think and act?

Use a think, pair, share, strategy to have students explore these issues.

Have individual students start with a web with **My Decisions and Actions** in the middle and give them a few minutes to jot down the factors that they think influence them.

Then have the students share with a partner and add to their webs. Have 2 pairs join together and create a new web on chart paper. Post the chart paper and allow time for a gallery walk if you wish or do a whole class debrief having students share their ideas. Some factors and influences that students may include are:

friends, peers, mother, father, parents, siblings, school, religion, media, advertising, internet, Facebook friends, other social media, You Tube, TV, films, celebrities, actors, athletes, money, work, co-workers, boss / employer, hobbies and partying.

Many influences can be clustered around groups such as family, community, media, peers, etc.

Next ask students to rank the factors that are currently most important in influencing their decisions. You could ask students to rank the top 3 or 5 or another number that you think is appropriate. Debrief this exercise. Stress that each person is different and that the factors that influence us do change over time as we get older and we have new experiences. Some factors remain powerful throughout our lives and others change. They may write the numbers on the factors on their web.

Ask students to suggest

When are these factors positive influences?

When are they negative influences?

or

Which factors are positive influences?

Which factors are negative influences?

Which factors can be both positive and negative influences?

2. Now ask students what factors influence other people's decision to marry. Ask them what factors influenced some of the people they know who have married. These could be siblings, cousins, parents, other relatives, family acquaintances, community leaders, friends, celebrities, etc.

Ask the students if they think the people they are discussing freely consented to the marriage.

Return to the personal and ask them which factors you think will be most important in influencing your decision to marry someday based on your values?

These activities can be done as multiple webs or as brainstorms in small groups and then extended to the whole class.

3. If the teacher has students who are having difficult relations with their family, they may wish to have a final brainstorm to draw out some of the positive influences that a family provides to present a balanced context prior to reading the graphic novel. Note that if a few students are perhaps facing crises, you should refer them to the supports in the ***Emancipation or Leaving Home*** resource.

4. The above activities have set the stage for students to explore the graphic novel, *It's My Choice: Who, If, When to Marry*. This document may be approached in groups. There are 3 different stories in the novel, "Maya and Sam", "Karine and Sheila", and "Ash." Assign at least two groups of students to each story. Have the students read their story and prepare a report to the class. Depending on your class this may be an open-ended read and report or you can offer some guiding questions. Some examples are suggested below which will help the teachers as they circulate among the groups. You may also consider the questions outlined in the supporting handout, ***Forced Marriage***. This document should be copied and given to students as part of this lesson or as a follow-up assignment, possibly for homework.

A. Questions to consider for ***Maya and Sam***, pp. 1 - 15:

1. How old was Maya when her parents raised the topic of marriage and what was her situation?
2. Why did Maya's parents, aunts and uncles want Maya to get married?
3. Why was Maya opposed to their suggestions?
4. How did her brother, Avi's, experience complicate the family situation?
6. How did Maya's parents try to control her and what arguments did they use to try and convince her to marry Sam?
7. What do you think is the parents' most powerful argument?
8. Where was the wedding and why did Maya and Sam go through with the wedding?

B. Questions to consider for ***Karine and Sheila***, pp. 17 - 25:

1. Why was Sheila having disagreements with her parents?
2. What is IZZAT and why was this important?
3. Why did their parents take Sheila to Pakistan and what happened?
4. What happened to Karine's relationship with her parents when she turned 18?

5. Whom did Karine turn to for support and assistance?
6. What plans did Karine develop and who helped her carry them out?
7. What legal rights does Karine have?
8. How do you feel about Sheila and Karine's stories?

C. Questions to consider for **Ash**, pp. 27 - 37

1. Why did Ash immigrate from Sri Lanka to England?
2. Why did Ash decide to immigrate to North America after graduating from university?
3. Why did he find Montreal a supportive community?
4. Why did young people not talk to their parents about dating in Sri Lanka?
5. How did Ash's parents find out that he was gay and what was their reaction?
6. What did Ash's parents think he should do?
7. What terms did his parents use that showed their misunderstanding of homosexuality and what was Ash's reply? (parents' words: "cured, this, choice, not normal, curse, shame"; Ash's reply: "This is what I am. I can't change it. I'm sorry.")
8. Why and how did Ash's parents pressure him into marrying?
9. What happened to Ash's marriage? Why did he tell his wife that he was gay and how did she react?
10. How did each of them feel about the experience?
11. What lessons did Ash learn from his experience that he could share with Karine and other young people?

5. As the student groups report on their story, have the class take a few notes. Students may use the organizer provided or simply take their own notes on each of the other 2 stories as a basis for comparison and reflection.

6. Provide students with the **Forced Marriage** handout for key background material on the Canadian and Ontario legal context and terms such as coercion, consent, annulment, duress, and oppression.

7. You may want to have a 4th group of students report on the *S(A) v S(A)* case as part of the stories on young people who have been forced to marry. This case from Ontario in 1988 involves a girl, "S", who was under the age of 18, and in fact was only 16 at the time of her marriage. We would recommend that you take the time to discuss this handout in class 3 or 4, but if you are pressed for instructional time, this would be one way to share the information with the class.

8. If you would like to add some of the cases from Rachel Browne's 12 Jan. 2015 *Maclean's* article, "Against their Will: Inside Canada's Forced Marriages" this would allow you to increase the number of cases from 3 to 6. The 3 case studies of "Lee Marsh", "Antua Petrimoulx", and "Elizabeth" in "Against their will" provide an opportunity to explore

additional cases from different communities. More research would be needed to explore the Lev Tahor community as a case study.

D. Questions to consider for **Lee Marsh**

1. How old was Lee when her mother started “shopping her around”?
2. Where did Lee’s mother showcase her and how did she make her dress?
Why?
3. How did Lee feel when her mother announced whom she had to marry and when?
4. Why didn’t Lee tell her mother how she felt or object to the wedding?
5. How was the decision to marry announced to the community and why did this make it very difficult for Lee?
6. What was Lee’s marriage like and how did it trigger memories of past abuses?
7. How was the Jehovah Witnesses practice of “dis-fellowshipping” used and why was it so powerful?

E. Questions to consider for **Antua Petrimoulx**

1. When and where was Antua born and what was her name?
2. How did her mother and siblings view and treat her when she was growing up?
3. Why did her mother force her to marry at the age of 20?
4. How was Antua treated by her family and the police when she left her marriage?
5. How did Antua get into Canada and how has her life been here?

F. Questions to consider for **“Elizabeth”** ?

1. What were the basic expectations around marriage for members of “Elizabeth’s” community?
2. How was courtship conducted by men and women in her community and who ultimately selected her to be his bride?
3. What happened with “Elizabeth’s” fiancé and why did they not marry?
4. How did women and men in “Elizabeth’s” community react when she complained about the conduct of her fiancé and how did they treat her?
5. What did “Elizabeth” learn through the Agincourt Community Centre’s forced marriage project and what is happening to her fiancé in England?
6. How did “Elizabeth’s” parents treat her?
7. Why does “Elizabeth” support Bill S-7 ?

9. Ask students to reflect on one or more of the following questions. If the teacher wishes to collect an Assessment of Learning assignment, share or develop a simple writing task rubric and set the appropriate length parameters.

How would you plan to talk with your parents or guardians about “marriage” and your future marriage in particular? What do you think would be their reaction to the topic? Would they be open to hearing your ideas? Would you be willing to listen to theirs? What ground rules would you set for the potential inter-generational differences of opinion in a discussion?

What topics would you raise and what topics, if any, would you avoid and why? Which topics would you anticipate agreement on and on which topics would you expect to disagree? For example: age to marry; characteristics of a partner (age, ethnicity, religion, education level; career path) size and cost of a wedding; pre-marital sex; responsibilities of newlyweds; emotional or economic support by the parents for the 2 newlyweds; grandchildren; possibility of marriage breakdown. After this conversation, if you thought it would be appropriate to discuss your “legal rights,” it would be very important to do more research on questions of age, permission, and support. See the other four *Youth Agency and the Culture of Law Resources* and the support agencies referenced in them.

Handout:
Factors Influencing My Decisions & Actions

My Decisions
& Actions

Handout:
Factors Influencing Other People's Decision to Marry

_____'s
Decision to
Marry

Handout:
Factors that May Influence MY Decision to Marry

MY
Decision to
Marry

Handout:
Some Positive Influences from My Family & Community

ME

Handout:
Notes on *It's My Choice: Who, If, When to Marry*

FACTORS/ STORIES	Maya and Sam	Sheila and Karine	Ash
Young person's attitudes towards marriage			
Parents' attitudes towards marriage			
Community's attitude toward marriage			

Handout: Notes on It's My Choice: Who, If, When to Marry				
FACTORS/ STORIES	Maya and Sam	Sheila and Karine	Ash	
Young person's options				
Legal issues				

Handout:
Notes on It's My Choice: Who, If, When to Marry and Forced Marriage

FACTORS/ STORIES	Maya and Sam	Sheila and Karine	Ash	1988 Ontario Case of "A" v "S"
Young person's attitudes towards marriage				
Parents' attitudes towards marriage				
Community's attitude towards marriage				

Handout:
Notes on It's My Choice: Who, If, When to Marry and Forced Marriage

FACTORS/ STORIES	Maya and Sam	Sheila and Karine	Ash	1988 Ontario Case of "A" v "S"
Young person's options				
Legal Issues				

Handout:

Notes on “Against Their Will: Inside Canada’s Forced Marriages” by Rachel Browne, Maclean’s 12 Jan. 2015

FACTORS / STORIES	Lee Marsh	Antua Petrimoulx	“Elizabeth”	Children of Lev Tahor
Young person’s attitudes towards marriage				
Parents’ attitudes towards marriage				
Community’s attitude towards marriage				

Handout:

Notes on “Against Their Will: Inside Canada’s Forced Marriages” by Rachel Browne, Maclean’s 12 Jan. 2015

FACTORS / STORIES	Lee Marsh	Antua Petrimouix	“Elizabeth”	Children of Lev Tahor
Young person’s options				
Legal issues				

Handout:
My Notes on Youth Agency and the Culture of Law Resources, Page 1

Groups	Forced Marriage	Emancipation or Leaving Home	Age of Majority
1.			
2.			
3.			
4.			

Handout:
My Notes on Youth Agency and the Culture of Law Resources, Page 2

	Minimum Marriage Age	Guardianship	Rights in International Law
1.			
2.			
3.			
4.			

Handout:
5 Questions on Our Group Inquiry, _____,
in Resource _____

1.

2.

3.

4.

5.

Handout: Reflection

Reflection: How would you plan to talk with your parents or guardians about “marriage” and your future marriage in particular? What do you think would be their reaction to the topic?

Consider: Would they be open to hearing your ideas? Would you be willing to listen to theirs? What ground rules would you set for the potential inter-generational differences of opinion in a discussion?

What topics would you raise and what topics, if any, would you avoid and why? Which topics would you anticipate agreement on and on which topics would you expect to disagree? For example: age to marry; characteristics of a partner (age, ethnicity, religion, education level; career path) size and cost of a wedding; pre-marital sex; responsibilities of newlyweds; emotional or economic support by the parents for the 2 newlyweds; grandchildren; possibility of marriage breakdown.

After this conversation, if you thought it would be appropriate to discuss your “legal rights,” it would be very important to do more research on questions of age, permission, and support.

You may write this in the first or third person, or you may script it in dialogue with or without comic characters of yourself and your parents.

Reflection

Model II (5+ Classes)

My Choice: Who, If, When to Marry?, “Against their Will: Inside Canada’s Forced Marriages” and the 5 Youth Agency and the Culture of Law Resources

Lesson 1: Forced Marriage

Start with the graphic novel and the *Forced Marriage* resource and follow Lesson 1 above for the first 2 – 3 classes.

Lesson 2: Law’s Culture on Youth Agency

This model uses the resources on age of majority, guardianship, and minimum marriage age as legal tropes by which to infer the law’s culture of youth. These three tropes offer conceptual anchors for the students to approach the materials on forced marriage and emancipation. This was the conceptual approach taken to designing the curriculum. But for teaching purposes, you can adopt different approaches. For instance, you may wish to introduce the forced marriage/emancipation materials first, and then proceed to the other three topics. Or you can reverse the lesson order and get students to understand the three legal tropes *before* addressing forced marriage and emancipation. The ordering depends on the curricular needs of the class.

For Lesson 2, divide the students into groups and assign 2 or 3 groups to each of the five resources. Allow 1 to 2 periods for the student groups to prepare their reports to the class. Allow 2 - 3 periods for students to report on their learning. Give students the **Framing Question** appropriate to their resource. Encourage students to use the QUESTIONS FOR CONSIDERATION in their section of the resource to guide their inquiry. Consider posing the **Concluding Question** to the class following the group presentations on a specific resource as a way to start the summary and consolidation discussion. With some classes especially in grade 12 courses these activities may be designed as student-led seminars.

Have the groups work independently on a specific aspect of the assigned resource such as the historical roots of the concept or 1 of the cases introduced in the resource. Below are some possible framing questions and group assignments for each of the resources. Each resource has a list of Key Terms; provide the specific list to the groups on that resource and ask them to produce a definition of the term(s) in their group’s section and post it as part of their report to the class. To promote students’ inquiry skills, ask each individual or each group to create 5 questions on their topic and collect these for Assessment for Learning. Give students 1 – 2 periods to read their section of the resource, prepare 5 questions and their report to the class. Student reports should be about 5 minutes. When students have been assigned a case study or a specific court case, encourage them to present their key points to the class in a role play as the plaintiff/ petitioner, respondent, and judge.

1. Forced Marriage

Note that the Forced Marriage handout has key background information on the core concepts that underpin the laws for a legal marriage in Ontario and Canada's responsibilities under international law to uphold the rights of children and women. For students in grades 11 or 12 who may wish to undertake a research project on this issue, there are useful links provided to research reports and to international treaties and conventions. If you dealt with this handout as part of Lesson 1, then you may proceed to the remaining 4 handouts. If not, here are the directions to include Forced Marriage as one of the 5 group assignments.

Framing Question: What are the essential criteria to conclude a legal and valid marriage contract in Ontario?

Possible Group Topics

- a) *S(A) v S(A)*
- b) What are Canada's obligations under international law and how well does Canada enforce them?
- c) What are the options and support for people facing forced marriages?
- d) In what order would you recommend that a friend approach these groups?
Contact Justice for Children and Youth to see what advice they would offer.

Concluding Question: What are the differences between a divorce and an annulment and the legal criteria for the court to grant them? Why would most people like "A" who were forced to marry prefer an annulment?

2. Emancipation or Leaving Home

Framing Question: When should youth consider taking the extreme step of leaving home and what are the challenges, risks and supports available?

Possible Group Topics

- a) Case Study – Tarek and his Parents
- b) *Letourneau v Haskell*
- c) *Children's Aid Society of Peel (and D) v S(P)*
- d) Child Protection and Children Under 16 Years of age.

Concluding Questions: Do you think that Ontario should join Quebec and a number of American states and set up a court process to allow young people under the age of 18 to apply for "emancipation"? What criteria should the province set?

3. Age of Majority

Framing Questions: What are the main differences between people who have reached the age of majority and people who are below that age? Why do we have to have 1 age apply to everyone in Ontario but not in Canada?

Possible Group Topics

- a) How and why has the age of majority changed from ancient Rome to today and why does Roman law matter?
- b) What is the proper voting age? Arguments in 3 places: Alberta, Ontario, California
- c) *Consent for Medical treatment: Manitoba (Director of Child & Family Services v C(A) (interpretation of "best interests of the child")*
- d) What is the connection between the U.N. *Universal Declaration of Human Rights* and the U.N. *Convention on the Rights of the Child* and how does the U.N. enforce these treaties and conventions and on whom do they rely?

Concluding Activity:

Have students brainstorm all the activities that have an age limit: starting school, dropping out of school; driving, drinking, adult movies, seniors' discounts, pilot's license, voting, joining the military, signing a contract, writing a will, buying real property, running for elected office, Senator, Judge, etc.

Concluding Question:

How important are capacity and independence in determining when a person has reached the "age of majority" or adulthood in a society? What other criteria do you think are important?

4. Minimum Marriage Age

Framing Question: Why do we have laws that say who can and cannot marry? Why a minimum marriage age?

Possible Group Topics

- a) *Re Evans*
- b) *Fox v Fox*
- c) *A (E) (Next Friend of) v Manitoba (Director of Child & Family Services)*

Concluding Question:

Why is the birth of an expected child or the presence of a child an important factor in leading the courts to make an exception to the minimum age of marriage? What other factors appear to be important as well?

5. Guardianship

Framing Question:

Why do minors require guardians?

Possible Group Topics

- a) How and why has guardianship changed from ancient Rome to today and why were women lumped in with minors and incapable adults?
- b) Case Study of Tyler and Faria in Ontario: What would happen if their parents divorced, or died and they received an inheritance?
- c) *Manitoba (Director of Child & Family Services) v C (A)*
- d) *E. (Mrs.) v. Eve* on sterilization and substitute decision-making for incapable adults

Concluding Question:

Who may be a guardian and what are the limits on the power of a guardian as revealed by these cases?

6. Children and Youth Rights in International Law

Framing Question:

How are the rights of children and youth in the area of marriage and family law recognized in international law? (See Forced Marriage, Age of Majority, and the specific U.N. treaties and conventions.

Possible Group Topics

- a) How might young people facing coercion in a family's plans for them to marry reference the U.N. *Universal Declaration of Human Rights* and to whom could they turn for help?
- b) How might young people facing coercion in a family's plans for them to marry reference the U.N. *Convention on the Rights of the Child* and to whom could they turn for help?
- c) How might young people facing coercion in a family's plans for them to marry reference the U.N. *Convention on the Elimination of all Forms of Discrimination Against Women* and to whom could they turn for help?

Concluding Questions:

Which federal and provincial government Ministries could young people turn to for support, what social agencies could they turn to for support, and how could they most effectively mobilize the media to their case?

How could you bring pressure to bear on the federal government to sign the U.N. conventions and protocols that Canada has not accepted?

Model III (Variable Class Time)

Dealing with the 5 Youth Agency and the Culture of Law Resources Separately or Sequentially

Some teachers may wish to take one or more of the five Youth Agency and the Culture of Law Resources and devote a class to the concepts in these documents because they meet directly one or more of the curriculum expectations in their course. Teachers are invited to reproduce the specific resource and distribute it to the class. Each resource has a number of QUESTIONS TO CONSIDER that will direct student investigations. The framing and concluding questions above will assist teachers in planning their lesson on this specific topic and set of concepts.

Youth Agency and the Culture of Law

Part II: Resources



Youth Agency and the Culture of Law

Age of Majority and Age-Based Laws in Canada



Age of Majority and Age-Based Laws in Canada

The age of majority is the age at which the law considers someone to have reached adulthood and is therefore a full legal citizen whose decisions no longer require the oversight of a parent or guardian. The age of majority allows one to independently enter contracts, make a will, and buy a lottery ticket, for example. The age of majority is not the same across all provinces of Canada. Rather, it is determined by each province and territory according to section 92(13) of Canada's Constitution Act, 1867. The age of majority applies to all provincial laws, and is set at either 18 or 19 depending on which province you live in. For federal laws – which apply to every Canadian regardless of which province that person lives in – the age of majority is 18. This includes eligibility for military service and voting in federal elections, for example.

Before examining in detail the rules and rationales behind age-based laws in Canada (and Ontario in particular), it may be useful to look at how the age of majority has been applied and conceptualized throughout history in some parts of the world. In the next section, we review the history of the age of majority in ancient Rome.

As you read about the age of majority in ancient Rome, keep in mind that while Roman law is an important influence on the Canadian legal system that exists today, it is not the only legal system that influences the experience of law in Canada. Indigenous peoples, who predated European colonists, had their own customs and legal systems.

Aboriginal legal traditions and reinvigorated approaches to traditional Aboriginal laws continue to be practiced in some communities across Canada. Federal and Provincial law in Canada draws heavily upon British and French laws (the latter being influenced by Roman law). These legal systems were introduced through the arrival of European colonists in North America in the 17th and 18th centuries.

As you read about the history of the age of majority in ancient Rome and how it differs across provinces in Canada, pay close attention to what the rationales justifying an age of majority imply about children, teenagers, and adults. In other words: *what do these rationales suggest about the way the law “sees” youth in your age group?*

History of the Age of Majority

In ancient Rome (753 BC – AD 476), individuals were not considered to have reached the age of majority until they turned 25. The age of puberty, meanwhile, was set at 14 for males and 12 for females. Those who were younger than 25 but had reached puberty possessed some legal capacity, unlike those who had not even reached puberty. This middle category of youth – 12 - 25 years of age for females and 14 - 25 years of age for males – could get married or be drafted into military service, for example. The law still recognized, though, that while these youth (whom we call teenagers and young adults today) were able to make their own legal decisions, they still needed some protection so that they weren't taken advantage of. Because of this, a guardian –

usually the male head of the family – oversaw their affairs. In the absence of a male head of the family, a guardian known as curator was appointed to protect the minor's best interests.

There was a possible exception to being treated as a minor under Roman law however. If someone had reached puberty but was under 25 and displayed *high maturity and intelligence*, he or she could be deemed to have reached the age of majority. In other words, though they were not 25, they would be treated under the law as if they were 25, and thereby would have their full capacity under the law respected. This exceptional privilege was referred to as *venia aetatis*. Generally, only males over twenty and females over eighteen could apply for this privilege. A public assembly would be convened to decide on the matter, and youth who requested this privilege would be required to provide proof of their age and have reputable and high-ranking men vouch for their character.

Centuries later in medieval Europe, the age of majority was determined by reference to the youth's *physical capacity* for military service, as opposed to maturity and judgment. In Europe from the 9th - 11th centuries, the age of majority was often set at 15 on the assumption that youth of this age had the strength and skill to wear and utilize military equipment and weapons (armaments) for combat. As the weight of armaments increased, and longer periods of training were needed to achieve knighthood and the requisite equestrian and combat skills for knighthood, the age of majority in

medieval Europe gradually increased, ultimately reaching 21 years of age.

For subjects who were not required to participate in the military – who instead provided agricultural services or paid rent in exchange for living on their lord’s land – the age of majority generally remained at 14 or 15.

Most recently, determining the age of majority has reverted to considerations of the maturity and rational capacity of different age groups. During the mid-twentieth century, philosophers identified *the ability to think rationally and act independently* as the main characteristics required in order for someone to have and exercise legal rights. Although all children are recognized as right-holders, both national and international laws continue to treat age groups differently based on assumptions about their capacity for rational thinking and autonomy. As children grow older, the law presumes that these capacities increase; consequently, their ability to autonomously exercise their legal rights increases as well.

In Canada, age continues to be used as a condition to determine when someone can participate in certain activities that require either or both *physical and mental ability*, such as voting, driving, drinking, marrying, contracting, will-making, education, employment, and jury duty.

QUESTIONS TO CONSIDER:

1. What ages have Romans, Medieval Europeans, and modern Canadians selected as turning points from childhood to adulthood?
2. What different criteria did the Romans, Medieval Europeans, and modern Canadians use to set the age of majority in their societies?
3. Rank these criteria in order of importance to you and explain your choices for the top two criteria that should be applied in determining the age of majority.

International Law and Youth Agency: *United Nations Convention on the Rights of the Child*

Canada's laws related to youth are also influenced by the United Nations (U.N.) *Convention on the Rights of the Child*. The *Convention on the Rights of the Child* sets out basic rights that apply to children under 18 throughout the world. The Convention protects all children from discrimination on 13 specific grounds including ability, ethnicity, race, religion, and sex.

To briefly summarize, the *Convention* declares that all children have rights to:

- Proper care from parents, guardians, and governments who must all look out for the **best interests of a child**
- Access to good quality health care
- Protection from discrimination, exploitation, physical and mental abuse, and neglect
- Access to education and information through the media that is important to their well-being
- Participation in society through expressing their opinions, sharing these with others, and having their views respected and taken into account by others
- Rest, leisure, and play

The convention also includes specific rights for children with disabilities, children who have been abused, children who have broken the law, and Aboriginal children in Canada. In 1991, Canada ratified the Convention. While the Convention has led to some changes in our laws, it has not been fully implemented into Canadian law by Parliament. In a report released in 2012, the UN was critical of Canada's progress in upholding its obligation under the Convention.

The Age of Majority in Canadian Provinces

18 years of age

Alberta, Manitoba, Ontario, Quebec, Prince Edward Island, and Saskatchewan

19 years of age

British Columbia, New Brunswick, Northwest Territories, Nova Scotia, Nunavut, Yukon, and Newfoundland

For any activity that falls under the jurisdiction of the federal government, however, 18 is the age of majority. Therefore, regardless of what province you live in, once you turn 18 you can join the military without parental consent, vote in federal elections, and run for federal office. To be consistent with federal voting laws, provincial and municipal voting laws across Canada also set the minimum voting age (as opposed to age of majority) at 18.

QUESTIONS TO CONSIDER:

1. Why do you think that the United Nations and 6 provinces selected age 18, while 4 provinces and 3 territories selected age 19 for the age of majority?

2. Does it make sense that some provinces would allow you to vote at the age of 18, but limit your ability to do other things until you turn 19? For example, in Ontario, although the age at which you can legally vote is 18, the legal drinking age is 19. What does this say about the rational capacity required to vote, as opposed to drink? Do different activities require a different level of maturity and rationality?

Fitzgerald v Alberta:

Should the legal voting age be lowered to 16?

Election laws in Alberta, as in other provinces, allow individuals to vote in elections once they turn 18. In 2002, high school students Christine Jairamsingh and Eryn Fitzgerald campaigned to lower Alberta's voting age from 18 to 16 to allow them to vote for city councillors and school trustees. Eryn and Christine had lived in Alberta for their entire lives, and were both 16 when the province held municipal elections in October 2001. They believed that 16 and 17 year olds were capable of making an informed choice, and deserved to have a say: "There are so many issues that are brought up and you don't get attention paid to you if you don't have the vote," said Fitzgerald. "We are taking this in school, we're forced to know this stuff. We're covering current events. We know a lot about it. We're educated."

Video: <http://www.cbc.ca/archives/categories/politics/rights-freedoms/voting-in-canada-how-a-privilege-became-a-right/fighting-for-a-lower-voting-age.html>

Eryn and Christine brought their challenge to court, arguing that the age restriction on voting was unconstitutional because it denied people under 18 the right to vote guaranteed to all Canadians, and discriminated against them based on age. Specifically, Christine and Eryn argued that the voting laws violated sections 3 and 15(1) of the *Canadian Charter of Rights and Freedoms*:

Canadian Charter of Rights and Freedoms

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

15(1). 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.

Under s. 3, Christine and Eryn argued that the words “every citizen” included citizens of all ages, even minors, and thus the age restriction clearly violated this section. The government, defending the age restriction, argued against this interpretation. Instead, they claimed that the words “every citizen” contained implied restrictions that such citizens must qualify to vote based on age and residence.

The judge agreed with Eryn and Christine that aside from the requirement of being a Canadian citizen, s. 3 contained no other limitations on the right to vote. Accordingly, the court found that setting the voting age at 18 violated s. 3 of the Charter.

Next, the court had to consider whether the age restriction violated s. 15(1) of the *Charter*. To convince the court that s. 15(1) was violated, Christine and Eryn had to follow the test for discrimination set out by the court in the leading case, *Law v Canada (Minister of Employment & Discrimination)*. For the court to be satisfied that s.15(1) was violated, Christine and Eryn would have to show that: a) they were being treated differently because of their age; and b) this different treatment was discriminatory because it interfered with their dignity by resulting in them being marginalized, ignored, or devalued, and thus could not be a legitimate differentiation under the law.

The first part of this test was clearly met: the voting age restriction resulted in individuals under 18 being treated differently than individuals over 18. Under the second part of the test, Christine and Eryn argued that the ability to vote is a basic and fundamental part of living in a democratic country like Canada. They claimed that by denying them the ability to fully participate in society, the law interfered with their dignity.

The government disagreed that the age restriction was discriminatory. In response to Christine and Eryn's claims, they argued that age is different than other characteristics like race, religion, and gender, because age corresponds with ability. For example, while restricting all atheists from voting would certainly be discriminatory, restricting all individuals under 18 is not. A voting age set at 18, while not perfect,

corresponds to a significant difference in ability between children and adults.

As with s. 3, the judge again agreed with Christine and Eryn that the voting rule discriminated against them.

However, the case was not over. As part of a standard *Charter* analysis, the government was allowed to present evidence that the voting laws, despite violating their rights, were nonetheless reasonable limits on the rights of youth under 18. That the government could make this argument – namely, admit that their rights were being violated but still justify this as necessary – is also part of any *Charter* analysis. Section 1 of the *Charter* states:

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

The judge decided that, while discriminatory, setting the voting age at 18 was a *reasonable* limitation on the rights of younger individuals, and so ultimately rejected Christine and Eryn's claim. The judge based his decision on the opinion that some age restriction on voting was necessary to make sure that those who vote are mature enough to make an informed and independent decision, and 18 years of age seemed to be

the most appropriate choice:

It is clear that some restriction is necessary since newborns and young children clearly do not have sufficient maturity to cast a rational and informed vote. Since there is no test to determine voting ability... individual evaluation of every potential voter is not even an option, leaving aside practical and budgetary considerations. Completion of high school, financial independence, and marriage are other possible indicators of maturity, but none of these are necessarily connected to the ability to cast a rational and informed vote.

Since an age-based voting restriction is necessary, the only matter remaining to be considered is whether setting the age at 18, rather than 16, 17 or some other age, impairs the right to vote and the right to equality as little as reasonably possible. Since individuals mature and develop at different rates, and their life experience varies greatly, any reasonable age-based restriction is going to exclude some individuals who could cast a rational and informed vote, and include some individuals who cannot.

Common sense dictates that setting the restriction at age 18 does not go further than necessary to achieve the legislative objective. In general, 18 year olds as a group have completed high school and are starting to make their own life decisions. They must

decide whether to continue with their schooling or join the workforce. This often coincides with the decision whether to remain at home with their parents, or move out on their own. It makes sense that they take on the responsibility of voting at the same time as they take on a greater responsibility for the direction of their own lives. Experience is a legitimate consideration in evaluating a voting restriction.

Furthermore, it can be assumed that by age 18 more individuals will have completed high school social studies courses giving them some information about our political system and our history as a nation. The completion of these courses gives these individuals important background knowledge for rational and informed voting.

QUESTIONS TO CONSIDER:

1. Do you agree with the court's decision in *Fitzgerald v Alberta*? Is 18 the appropriate age to set as the minimum voting age? Should it be higher or lower?
2. Does it matter that the teenagers wanted the right to vote only for city councillors and school trustees? Why do you think they limited their request to only these elections and not all elections?
3. What does the judge mean by “common sense” and “experience”? Do you share his “common sense”? Do you agree with his comments on “experience”? Why or why not?

QUESTIONS TO CONSIDER:

4. Is it fair for the law to assume that teenagers develop the capacity to make informed decisions at the same time?

5. What would you argue to the court if you were representing Christine and Eryn? What if you were representing the government?

6. Prepare a debate in your class to argue for and against granting the right to vote in all elections in Ontario to students under the age of 18 who successfully pass the Grade 10 Civics course.

In August 2013, a recent high school graduate named Hiran Zafari wrote an article in support of lowering the voting age to 16 for school board elections.

READ: “Why wait until 18 to vote? Let’s start at 16” The Globe and Mail, August 2, 2013:

<http://www.theglobeandmail.com/news/national/education/why-wait-until-18-to-vote-lets-start-at-16/article13430567/>

“Lowering the voting age for trustee elections is the first step in increasing youth citizenship and reducing youth apathy – and it makes the most sense, too. Unlike provincial or federal politics, educational politics affect all students under the age of 18, and their opinions are invaluable. Students are the only ones who can say, with conviction, what works and what does not in their classrooms. When it comes to policy, they know what would benefit their learning experience, and when it comes to trustees, they should know who would benefit their learning experience.”

QUESTIONS TO CONSIDER:

1. Read the Globe and Mail article by Hiran Zafari. Should the age requirement for school board elections be different than for municipal, provincial, and federal elections?

In California, a group of youth proposed legislation that would lower the state's voting age to 14. Rather than counting as a full vote, however, the votes of 14- and 15-year-olds would count as $\frac{1}{4}$ of an adult vote, and the votes of 16- and 17-year olds would count as $\frac{1}{2}$ of an adult vote.

Supporting the legislation, State Senator John Vasconcellos observed that lowering the voting age in this way “would much more likely develop [youths’] sense of responsibility” while still recognizing that “they’re not fully mature.” Art Croney, a member of the Committee on Moral Concerns, opposed the legislation, stating that young teenagers lack the life experience necessary to vote and do not have “legal responsibility for their own lives.” Their votes could be “susceptible to peer pressure, even a rock or a rap song.” The legislation did not pass.

QUESTIONS TO CONSIDER:

Read the article at: <http://www.sfgate.com/politics/article/Teenage-voting-rights-proposed-Ballot-would-2783145.php>. Would you support a similar amendment to voting laws in Canada? What are the pros and cons of adopting this system?

Challenges to Age-Based Laws: Consent to Medical Treatment

Manitoba (Director of Child & Family Services) v C(A)

Under Manitoba's *Child and Family Services Act* (CFSA), minors who are 16 years or older can consent to their own medical treatment, unless they are unable to understand the relevant facts and consequences of the decision. For children under 16 years of age, however, a court can make a decision about medical treatment that they decide is in the best interests of the child. In *Manitoba (Director of Child & Family Services) v C(A)*, A.C., a “mature” 14-year-old girl from Manitoba who identified as a Jehovah's Witness, tried to challenge this law based on her religious beliefs.

As you learn the details of this case, think about which decisions a young person who shows evidence of maturity should be allowed to make. Should a mature minor be allowed to make her own medical decisions – including a decision that might threaten her life?

A.C. was a 14-year-old girl in Manitoba who was admitted to hospital after suffering from internal bleeding due to Crohn's disease. The doctors at the hospital wanted to give A.C. a blood transfusion: without the blood transfusion, they believed that A.C. could potentially lose her life, and at the very least would suffer from serious long-term health consequences. As a devout Jehovah's Witness, however,

A.C. refused to consent to the blood transfusion. As part of her faith, A.C. believed that the Bible prohibited blood transfusions. A.C.'s parents supported her decision, stating that she "treasures her relationship with God and does not want to jeopardize it" and that she "understands her disease and what is happening".

While at the hospital, three psychiatrists completed an assessment of A.C.'s mental state to determine whether she in fact fully understood the consequences of this decision. The psychiatrists found that A.C. was cooperative, well-spoken, and did not have any psychiatric illnesses. They concluded that: "The patient understands the reason why a transfusion may be recommended, and the consequences of refusing to have a transfusion."

Despite A.C.'s religious beliefs and the findings by the psychiatrists that she was fully aware of the significance of the decision, the trial court ordered A.C. to undergo a blood transfusion against her will. The trial judge's decision was based on the CFSA in Manitoba, which states that a court can make a decision about medical treatment that is in the **best interests of the child** and does not need the consent of the child if he or she is under 16. In contrast, a child aged 16 or older, was presumed to have the capacity to consent to his or her own treatment:

Child and Family Services Act

25(8) Subject to subsection (9), upon completion of a hearing, the court may authorize a medical examination or any medical or dental treatment that the court considers to be in the best interests of the child.

25(9) The court shall not make an order under subsection (8) with respect to a child who is 16 years of age or older without the child's consent unless the court is satisfied that the child is unable

- a) to understand the information that is relevant to making a decision to consent or not consent to the medical examination or the medical or dental treatment; or*
- b) to appreciate the reasonably foreseeable consequences of making a decision to consent or not consent to the medical examination or the medical or dental treatment.*

In determining the best interests of the child, the CFSA specifies a number of things that the court must consider, including:

- *the mental, emotional, physical and educational needs of the child and the appropriate care of treatment to meet such needs;*
- *the child's mental, emotional and physical stage of development;*
- *the views and preferences of the child where they can reasonably be ascertained; and*
- *the child's cultural, linguistic, racial and religious heritage.*

According to the trial judge, the CFSA allowed the court to step in to make a decision that they felt were in her best interests. Whether or not A.C. had the capacity to make her own decision, then, was irrelevant. The trial judge believed the hospital doctors' testimony that A.C. would be in immediate danger if she wasn't forced to have a blood transfusion. Approximately six hours after the decision, A.C. received the blood transfusion against her will, and recovered.

Nevertheless, A.C. and her parents decided to challenge the decision to order a blood transfusion in court. They argued that the sections of the CFSA that denied her the ability to give consent violated sections 2(a), 7, and 15 of the *Charter of Rights and Freedoms*:

Charter of Rights and Freedoms

2. Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

15. (1) 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.

A.C. argued that the CFSA was contrary to s. 7 of the Charter because not allowing those under 16 to prove that they are capable of making their own medical decision was an arbitrary restriction. This restriction in the CFSA, then, interfered with her right to liberty and security. Under s. 15(1), A.C. argued that the act discriminated against her because of her age. Finally, under s. 2(a), A.C. argued that the act interfered with her religious beliefs as a Jehovah's witness.

A.C. believed that these Charter rights were violated by the CFSA because the act did not allow her and others under 16 to prove their capacity. If the act allowed minors the ability to do this, it would not offend these Charter provisions.

The Supreme Court of Canada, in a decision written by Justice Rosalie Abella, disagreed with A.C. that these rights were violated. The Supreme Court ruled that the CFSA was constitutional, with 6 of the 7 judges in agreement. However, although the court ruled that the act was constitutional, A.C. didn't completely lose her case. She managed to convince the court that, in order to be constitutional, s. 25(8) and 25(9) of the CFSA should be interpreted in a way that allows an adolescent under 16 to provide evidence of her maturity, such as a psychiatrist's report like the one A.C. had submitted.

If a young person under 16 can persuade a court that she is mature enough to make her own medical decisions, then her views must be respected. According to Justice Abella:

The more a court is satisfied that a child is capable of making a mature, independent decision on his or her own behalf, the greater the weight that will be given to his or her views when a court is exercising its discretion under s. 25(8). In some cases, courts will inevitably be so convinced of a child's maturity that the principles of welfare and autonomy will collapse altogether and the child's wishes will become the controlling factor. If, after a careful and sophisticated analysis of the young person's ability to exercise mature, independent

judgment, the court is persuaded that the necessary level of maturity exists, it seems to me necessarily to follow that the adolescent's views ought to be respected. Such an approach clarifies that in the context of medical treatment, young people under 16 should be permitted to attempt to demonstrate that their views about a particular medical treatment decision reflect a sufficient degree of independence of thought and maturity.

The majority believed that the act was written in a way that allowed for this interpretation; interpreted in this way, the CFSA did not violate s. 7, s. 15, and s. 2(a) of the *Charter*. The following paragraphs outline the court's decision under each section of the *Charter*.

Right to life, liberty, and security (s. 7): The majority decided that s. 7 of the *Charter* was not violated because rather than assuming that no one under the age of 16 had the maturity to make a decision about their own treatment, s. 25(8) and 25(9) of the CFSA allowed for the possibility that an individual could have some input in the decision if they had provided enough evidence of their maturity. Justice Abella, writing for the majority, stated that:

Given the significance we attach to bodily integrity, it would be arbitrary to assume that no one under the age of 16 has capacity to make medical treatment decisions. It is not, however, arbitrary to give them the opportunity to prove that they have sufficient maturity

to do so. Interpreting the best interests standard so that a young person is afforded a degree of bodily autonomy and integrity commensurate with his or her maturity navigates the tension between an adolescent's increasing entitlement to autonomy as he or she matures and society's interest in ensuring that young people who are vulnerable are protected from harm....

Equality Rights (s. 15): Under s. 15, The Supreme Court stated that using the age of 16 as the age for presuming capacity was not discriminatory, because on the Court's interpretation of the CFSA, those under 16 can provide evidence of their maturity:

By permitting adolescents under 16 to lead evidence of sufficient maturity to determine their medical choices, their ability to make treatment decisions is ultimately calibrated in accordance with maturity, not age, and no disadvantaging prejudice or stereotype based on age can be said to be engaged.

Freedom of Religion (s. 2): Finally, the court found that A.C.'s religious rights under s. 2(a) of the *Charter* were also not violated because the act allowed a minor to provide evidence of his or her maturity. To add to this, the CFSA also states that religious beliefs would be taken into account in determining the best interests of the minor.

The court interpreted s. 25(8) and s. 25(9) of the CFSA to mean that, should they wish to make their own medical

decision, adolescents under 16 will have an opportunity to prove to the court that they are mature enough to do so. If a court agrees that the adolescent is mature, they must respect the adolescent's views. But that does not mean the court steps back to let the adolescent decide. The court, and not the adolescent, will ultimately make the final decision as to treatment based on what they think is best for the adolescent, in light of all the evidence. The majority found this necessary to look out for the best interests of a vulnerable group – minors.

Chief Justice McLachlin, agreeing with Justice Abella, also wrote part of the decision. She emphasized the importance of having the court make the final decision:

Age, in this context, is a reasonable proxy for independence. The CFSA is not alone in recognizing age 16 as an appropriate marker of maturity for certain purposes. Below 16, many adolescents are physically dependent on parents for mobility (e.g. driving) and cannot work full-time. Most are also required by law to attend school. In other words, a variety of laws and social norms make them more dependent on their immediate families and peers in their daily lives than older adolescents. The danger of excessive parental and peer influence overwhelming free and voluntary choice is ever-present. Similarly, in the youth criminal law context, it is recognized as a principle of fundamental justice that young persons must generally be treated differently from adults by virtue of their

“reduced maturity and moral capacity”... The CFSA acknowledges these realities and therefore places the final decision-making power with the courts in accordance with the best interests of the child.

Justice Binnie was the single dissenting judge. He agreed with the majority that the wishes of a mature child must be taken into account. But he went one step further. Justice Binnie argued that if an adolescent under 16 can prove to the court that she is mature and capable of understanding the facts and consequences of the decision, then the court should step back and allow the mature adolescent to decide her own treatment.

For this reason, Justice Binnie argued that the CFSA violated the *Charter* because the court could order treatment even when the child showed evidence of maturity. Denying mature minors the right to decide medical treatment could not be justified under the *Charter*:

My colleague Abella J. acknowledges that judges should be required to take the views of a mature minor into consideration when the judge decides what is in the best interest of A.C. But this position ignores the heart of A.C.’s argument, which is that the individual autonomy vouchsafed by the *Charter* gives her the liberty to refuse the forced pumping of someone else’s blood into her veins **regardless of what the judge thinks is in her best interest**. In my respectful view, the *Child and Family Services Act*... is insufficiently respectful

of constitutional limits on the imposition of forced medical treatment on a mature minor. ...

A.C. is not an adult, but nor was she a toddler at the relevant time... Under Abella J.'s approach, the court may (or may not) decide to give effect to the young person's view, but it is still the court that makes the final decision as to what is best for the young person. This mature young person, however, insists on the right to make her own determination about what treatment to receive or not to receive, based on a mature grasp of her perilous situation.

QUESTIONS TO DISCUSS:

1. The decision in *Manitoba (Director of Child & Family Services) v C(A)* suggests that the court believes that minors are a vulnerable group whose autonomy must be limited so that decisions can be made in their best interests. In other words, the court seems to be expressing paternalistic beliefs about minors. Would you consider teenagers to be a vulnerable group? At what age should teenagers no longer be considered in need of protection through decision-making on their behalf?

QUESTIONS TO DISCUSS:

2. Do you agree with the majority or the dissent? Is it appropriate for the court to make the final decision on the best interests of a child under 16, even if that child seems capable of making her own decision?

3. What should a court take into account in determining whether or not a minor is mature?

Ontario

In Ontario, medical decisions are covered by the *Health Care Consent Act* (HCCA). Unlike in Manitoba, there is no *minimum age of consent* for medical treatment under the HCCA. For consent to a medical treatment to be valid, the patient must be determined by the physician to be *capable* of giving consent. Furthermore, the consent must be *informed* (meaning that the physician has provided enough information about the treatment) and *voluntary* (meaning that the patient cannot be coerced into giving consent).

Because there is no minimum age of consent, a person of any age could technically consent to treatment if they are determined to be capable of making the decision, and if consent is informed and voluntary. According to the College of Physicians and Surgeons of Ontario, “The Act does not identify an age at which minors may exercise independent consent for health care because the capacity to exercise independent judgment for health care decisions varies according to the individual and the complexity of the decision at hand. Physicians must make a determination of capacity to consent for a child just as they would for an adult.”

The HCCA states that an individual is capable of making a medical decision if:

“...the person is able to understand the information that is relevant to making a decision about the treatment, admission or personal assistance service, as

the case may be, and able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.”

QUESTIONS TO DISCUSS:

1. While Manitoba chooses the age of 16 as a “reasonable proxy” for when minors are mature enough to consent to medical treatment, Ontario leaves it up to the physician to determine if a child at any age has the capacity to consent. Do you agree with Ontario’s approach or Manitoba’s approach? Would you suggest a different approach? Is there another age at which a young person should be allowed to make his or her own medical decisions?

QUESTIONS TO DISCUSS:

2. Should there be different rules for decisions that might be life-threatening?

3. Does it matter whether this decision is based on a religious belief? To what extent should the reasons for a young person's medical decision matter, if at all?

Makayla Sault

Makayla Sault was a 10 year-old girl from the New Credit First Nation near Caledonia, Ontario. Makayla was diagnosed with leukemia in January 2014, and was told by doctors that she would have a 75 per cent chance of survival if she received chemotherapy, but would likely die if she chose not to receive chemotherapy.

After 11 weeks of chemotherapy, which caused Makayla to suffer severe side effects, Makayla and her parents decided to stop using chemotherapy, and use traditional medicines instead. Makayla stated that she came to this decision after a spiritual encounter in her hospital room. The hospital referred Makayla's case to the Children's Aid Society, but they chose not to interfere.

WATCH: <https://www.youtube.com/watch?v=NrF5wWQ4hIU>

READ: First Nations girl chooses traditional medicine over chemo: <http://www.cbc.ca/news/aboriginal/first-nations-girl-chooses-traditional-medicine-over-chemo-1.2644637>

READ: Makayla Sault's case raises questions about child welfare laws: <http://www.cbc.ca/news/aboriginal/makayla-sault-s-case-raises-questions-about-child-welfare-laws-1.2658155>

QUESTIONS TO DISCUSS:

1. Who do you think should be responsible for making the decision about Makayla's treatment? Makayla, her parents, the physicians, a court, or another individual or group?
2. Should Makayla have been allowed to stop receiving chemotherapy? Why or why not?

QUESTIONS TO DISCUSS:

3. How would you determine whether Makayla has shown the “capacity” to make this treatment decision?

4. Compare Makayla’s story with the case of A.C. in Manitoba. What are the differences in the two cases that may have led to different outcomes?

Key Terms

- Age of Majority
- Capacity
- Curator
- *Venia Aetatis*
- Discrimination
- Paternalistic
- Vulnerable

Youth Agency and the Culture of Law

Guardianship



Guardianship

What does it Mean to be the Guardian of a Minor?

A guardian of a minor is responsible for protecting that minor by making decisions that are in the minor's **best interests**. In Canada, a minor is a person who is under the **age of majority**, which is the age at which the law considers someone to have reached adulthood and is therefore a full legal citizen whose decisions no longer require the oversight of a parent or guardian (for more on the age of majority, see the Age of Majority Handout). Like laws on the age of majority, laws that refer to guardianship over minors are determined individually by each province and territory.

Why do minors require guardians? Before examining in detail the rules and rationales behind guardianship in Canada (and Ontario in particular), it may be useful to look at how guardianship has been applied and conceptualized throughout history in some parts of the world. As you read about the history of guardianship in ancient Rome and how guardianship applies to minors today, consider what the rationales justifying guardianship imply about children, teenagers, and adults. What do the laws and legal decisions suggest about the way the law “sees” youth in your age category?

History of Guardianship in Ancient Rome: Tutorship and Curatorship

The reasons for why the law requires guardians for minors is evident from legal traditions throughout history, such as in ancient Rome (753 BC – AD 476). Moreover, Roman law from this period has influenced many state legal systems today.

In ancient Rome guardianship over minors and their property varied depending on the age and gender of the child. The type of guardianship varied depending on which of the following groups a particular minor fit into:

- Children below the age of puberty, which was set at 14 for boys, and 12 for girls
- Children who reached puberty but did not yet reach the age of 25, the age of majority under Roman law

Guardianship during this period did not only apply to minors. Two additional groups of individuals could be subject to a form of guardianship, even as adults

- Women who were older than the age of puberty (12), and who for specific reasons needed special guardianship (see below, Women in Ancient Rome)
- Adults who were viewed as mentally incapable

Children Below the Age of Puberty

For children under the age of puberty in ancient Rome the male head of the family had complete legal authority over their affairs, and was called the *paterfamilias*. For these children, the *paterfamilias* was likely to be their father or their paternal grandfather, if he were still alive.

The legal power held by the *paterfamilias* was extensive, and could even include the legal authority to put a ward, including an adult ward, to death. The *paterfamilias* also had control of all of the child's property and possessions.

Women were never able to become a *paterfamilias*: if the father of a child died, the mother would continue to care for the child but did not have the authority to make legal decisions for the child. The mother was required to apply to a government official, such as a magistrate or governor, to have a male guardian appointed for the child. This court-appointed male guardian was known as a tutor, and he would be responsible for overseeing the child's affairs, including controlling the child's property and making legal decisions on the child's behalf.

If the child's mother also died, then the government would appoint a tutor on its own. In any case, the tutor could be someone suggested by the father in his will, or could be the closest male relative on the father's side. Otherwise, the government would select a tutor of its choosing. Minors without a *paterfamilias* required a tutor until they reached the

age of puberty, set at 14 for boys and 12 for girls.

Children Between Puberty and the Age of Majority

After reaching puberty, minors no longer required a tutor. Although they had not yet reached the age of majority (25), after reaching puberty they nonetheless gained some legal capacity. This second category of youth had the legal capacity to marry if they so desired. They were also deemed sufficiently capable that the government could draft them into military service. The law still recognized, though, that while these youth could make a wide range of decisions on their own, they still needed someone to oversee their affairs and ensure they weren't being taken advantage of. If a *paterfamilias* was still alive, that person would assume this modified responsibility. If not, then a guardian known as a curator was appointed by a government official to protect the best interests of children in this category, and oversee their legal matters. Curators performed a role similar to tutors, but generally had fewer responsibilities.

In some limited cases, a child who fell in this category (post-puberty but under 25 years of age), could avoid having a curator if he or she displayed high maturity and intelligence. In such a case, the child could be granted the special privilege of being deemed to have reached the age of majority. In other words, though they were not yet 25, they would be treated under the law as if they were 25, and thereby would have full legal capacity. This privilege was referred to as *venia aetatis*. Generally, only males over 20 years of age and

females over 18 years of age were granted this privilege. To gain this special capacity, young men and women had to appear before a public assembly, provide proof of their age, and have reputable and high-ranking men attest to their high maturity and intelligence to the satisfaction of those in attendance.

Women in Ancient Rome

In earlier periods of ancient Rome, women whose fathers had died could be subject to another form of guardianship known as *tutela mulierum* – the guardianship of women. Under this form of guardianship, a specific type of tutor would be appointed to a young woman after she reached puberty at 12 years of age. This special type of guardian would continue in that role, protecting a woman's interests even after she married – including after she reached the age of majority. This tutor did not live with the woman and had limited control over her decisions and her property; but this special tutor would oversee some of her legal and business affairs. The reason for appointing this tutor was to protect a woman's property, such as an inheritance, from people who were not part of the woman's birth family, including her husband. As curators were increasingly appointed to women older than 12 and younger than 25, however, the *tutela mulierum* gradually became rare.

Mentally Incapable Adults

In ancient Rome, a category of adults were viewed as being,

like infants, completely incapable of making their own decisions. These adults were often (rather unfavourably) referred to as “lunatics”, and the reason for their incapacity was viewed as arising from a mental illness or disability. There was no specific process for determining whether someone was mentally incapable. A curator, often the closest male paternal relative or someone chosen by the government, would be appointed to manage their affairs and make personal decisions on their behalf. Guardianship over these individuals lasted for their entire lives.

QUESTIONS TO CONSIDER:

1. Describe the different forms of guardianship that existed in ancient Rome.
2. What was the rationale for the different categories of guardianship?
3. Do you agree that guardians were necessary for all four groups (minors under puberty, minors who had reached puberty but were under the age of majority, women in general, and mentally incapable adults)?

QUESTIONS TO CONSIDER:

4. Why do you think there was only one age of majority (25) but two ages for puberty depending on if the child is a boy or a girl? What does the age difference imply about how boys and girls mature? Should that matter for purposes of law?

5. What does *tutela mulierum* imply about how women were viewed in ancient Rome?

Guardianship in Canada

As in ancient Rome, the idea that guardians must make decisions on a child's behalf reflects an understanding that minors lack the *capacity or maturity* to make decisions that are in their best interests. Guardians are therefore responsible for making decisions that are in the best interests of the child.

In Ontario, there can be two types of guardians for minors:

1. A “guardian of the person” makes decisions related to the well-being of a minor, including decisions related to health-care and education. In Ontario, parents are automatically the “guardian of the person” of their children, unless someone else has been specifically appointed by a court. This type of guardianship is referred to as “custody” in Ontario laws.
2. A “guardian of property” is responsible for managing any property the child may own, such as an inheritance. In Ontario, parents are not automatically the “guardian of property” of their children but can be granted this authority based on a statute, court order, or other document such as a will.

In Ontario, laws on custody and guardianship of property are determined by the *Children's Law Reform Act* (CLRA). The CLRA provides rules related to establishing paternity and maternity, custody, access (the right of a parent to spend

time with their child, and be given information about the child's health, education, and well being), and guardianship of children's property.

In particular, part III of the CLRA covers custody, access, and guardianship. Its central purpose is to ensure that decisions made by the court about custody, access, and guardianship are determined according to the *best interests of the children*.

Case Study: Tyler, 13, and Faria, 15, are brother and sister. They live with their mother and father. When they were born, their parents automatically became their “guardian of the person” and thus had custody over Tyler and Faria. This meant that while raising Tyler and Faria, their parents were both responsible for making decisions on their behalf – for example, choosing which school to send Tyler and Faria to, and deciding what immunizations to give them at the doctor's.

What would happen if Tyler and Faria's parents were to separate or divorce? One parent could have sole custody, or both parents could have joint custody. Custody refers solely to the ability to make decisions on behalf of the children, and doesn't necessarily determine who Tyler and Faria would live with or how they would split their time between their parents. Their mother, for example, could have sole custody of Tyler and Faria, even if they spent an equal amount of time with their father.

What would happen if one or both of their parents passed away? According to the CLRA, if one parent passed away, the surviving parent in most cases would have sole custody over Tyler and Faria. If both parents passed away, we examine whether in their wills they appointed an individual to have custody. The appointed person must agree to be a guardian, and must apply to the court to finalize the appointment within 90 days of the parents' deaths. If both parents die, the parents must also have appointed the same person in their wills to have custody. If each parent requested different people, both candidates would be invalid appointees as guardian. If the parents die, but did not prepare wills or did not choose a guardian in their wills, anyone could technically apply to the court to be Faria and Tyler's guardian. The court will decide based on the best interests of the children.

The CLRA provides a list of considerations that the court must review to determine the best interests of the child in decisions related to custody and access:

- a) The love, affection and emotional ties between the child and,
 - i. Each person entitled to or claiming custody of or access to the child,
 - ii. Other members of the child's family who reside with the child, and
 - iii. Persons involved in the child's care and up-bringing

- b) The child's views and preferences, if they can be reasonably ascertained
- c) The length of time the child has lived in a stable home environment
- d) The ability and willingness of each person applying for custody of the child to provide the child with guidance and education, the necessities of life and any special needs of the child
- e) The plan proposed by each person applying for custody of or access to the child for the child's care and upbringing
- f) The permanence and stability of the family unit with which it is proposed that the child will live
- g) The ability of each person applying for custody of or access to the child to act as a parent
- h) The relationship by blood or through an adoption order between the child and each person who is a party to the application

For example, suppose that Faria and Tyler's grandmother applies to the court for custody of the children. The court, in assessing the best interests of the children, would likely look at the current relationship that Faria and Tyler have with their grandmother, what Faria and Tyler's own preferences are,

and the living circumstances of their grandmother, among other things.

QUESTIONS TO CONSIDER:

1. What else should a court consider in determining whether or not to award custody to Tyler and Faria's grandmother?

Guardianship over property: What if Faria and Tyler had an inheritance? Similar rules apply to guardianship over Tyler and Faria's property. Suppose Tyler and Faria's grandfather passed away and left them a large inheritance. The management of Tyler and Faria's inheritance could depend on what Grandpa specified in his will. For example, Grandpa could request in his will that Tyler and Faria's parents (if they are still alive) are responsible for managing the inheritance. If Grandpa did not request in his will that the parents would manage their property, the parents could still apply to a court and request to be appointed guardians of Faria and Tyler's property. As with decisions related to custody and access, the court will make a decision based on what the best interests of the children are. In most cases, they will prefer that parents be appointed as guardians of property.

If Grandpa does not specify who will manage the property in his will, and the parents (or anyone else, for that matter) do not apply to be appointed guardians of the property, Faria and Tyler's inheritance will be managed by the government – in Ontario, the money would be held by the Accountant of the Superior Court of Justice for as long as Faria and Tyler are minors.

QUESTIONS TO CONSIDER:

1. What do you think should be taken into account when deciding what the best interests of a child are?
2. The best interests factors in the CLRA apply to the court (and therefore a judge) who is making decisions related to custody, access, and guardianship of a child's property. Are there other people who should be required by the law to make decisions that are in the best interests of a child?

How do the Guardian's Responsibilities Change as a Child Gets Older?

As children in Canada become older and therefore begin to display a greater capacity to make decisions that are important to their well-being, the need for a guardian decreases, and thus so too does the scope of a guardian's responsibility and authority to protect the minor's best interests. Although young people gain many rights and responsibilities when they reach the age of majority in their respective province or territory (18 or 19), in some circumstances they gain certain rights and responsibilities at an earlier age.

In many cases, children in Canada gain certain rights and responsibilities when they turn 16. For example, Ontario's Substitute Decisions Act defines adulthood as 16 or older.

However, children even younger than 16 may sometimes be able to influence or even wholly determine the outcome of decisions made on their behalf.

Manitoba (Director of Child & Family Services) v C(A)

Under Manitoba's *Child and Family Services Act* (CFSA), minors who are 16 years or older can consent to their own medical treatment, unless they are unable to understand the relevant facts and consequences of the decision. For children under 16 years of age, however, a court can make a decision about medical treatment that it decides is in the best interests of

the child. In *Manitoba (Director of Child & Family Services) v C(A), A.C.*, a “mature” 14-year-old girl from Manitoba who identified as a Jehovah’s Witness, tried to challenge this law based on her religious beliefs.

A.C. was a 14-year-old girl in Manitoba who was admitted to a hospital after suffering from internal bleeding due to Crohn’s disease. The doctors at the hospital wanted to give A.C. a blood transfusion: without the blood transfusion, they believed that A.C. could potentially lose her life, and at the very least would suffer from serious long-term health consequences. As a devout Jehovah’s Witness, however, A.C. chose not to consent to the blood transfusion. As part of her faith, A.C. believed that the Bible prohibited blood transfusions. A.C.’s parents supported her decision, stating that she “treasures her relationship with God and does not want to jeopardize it” and that she “understands her disease and what is happening”.

Despite A.C.’s religious beliefs and findings by multiple psychiatrists that she was fully aware of the significance of the decision, the trial court ordered A.C. to undergo a blood transfusion against her will. Although at the time of trial she had already received the blood transfusion, A.C. and her parents challenged the decision to order a blood transfusion in court. They argued that the sections of the CFSA that denied her the ability to give consent violated sections 2(a), 7, and 15 of the *Charter of Rights and Freedoms*.

The court ruled that the act was constitutional, and did not

violate these sections (see Age of Majority handout for a detailed review of the case). A.C. didn't completely lose her case, however. She managed to convince the court that the act should be interpreted in a way that allows an adolescent under 16 to provide evidence of her maturity, such as a psychiatrist's report like the one A.C. had submitted. *If a young person under 16 can persuade a court that she is mature enough to make her own medical decisions, then her views must be respected.* According to Justice Rosalie Abella, who wrote the decision:

The more a court is satisfied that a child is capable of making a mature, independent decision on his or her own behalf, the greater the weight that will be given to his or her views when a court is exercising its discretion under s. 25(8) [of the CFSA]. In some cases, courts will inevitably be so convinced of a child's maturity that the principles of welfare and autonomy will collapse altogether and the child's wishes will become the controlling factor. If, after a careful and sophisticated analysis of the young person's ability to exercise mature, independent judgment, the court is persuaded that the necessary level of maturity exists, it seems to me necessarily to follow that the adolescent's views ought to be respected. Such an approach clarifies that in the context of medical treatment, young people under 16 should be permitted to attempt to demonstrate that their views about a particular medical treatment decision reflect a sufficient degree of independence of thought and maturity.

QUESTIONS TO CONSIDER:

1. At what age should minors be allowed to make their own decisions, without requiring the consent of a parent or guardian? Is 16 an appropriate choice?

2. Under what age and under which circumstances should a court be allowed to overrule the wishes of a child?

Ontario

In Ontario, medical decisions are covered by the *Health Care Consent Act* (HCCA). Unlike in Manitoba, there is *no minimum age of consent* for medical treatment under the HCCA. For consent to medical treatment to be valid, the patient must be determined by the physician to be *capable* of giving consent. Furthermore, the consent must be *informed* (meaning that the physician has provided enough information about the treatment) and *voluntary* (meaning that the patient cannot be coerced into giving consent).

Because there is no minimum age of consent, a person of any age could technically consent to treatment if they are determined to be capable of making the decision, and if consent is informed and voluntary. According to the College of Physicians and Surgeons of Ontario, “The Act does not identify an age at which minors may exercise independent consent for health care because the capacity to exercise independent judgment for health care decisions varies according to the individual and the complexity of the decision at hand. Physicians must make a determination of capacity to consent for a child just as they would for an adult.”

The HCCA states that an individual is capable of making a medical decision if:

“... the person is able to understand the information that is relevant to making a decision about the treatment, admission or personal assistance service, as

the case may be, and able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.”

QUESTIONS TO CONSIDER:

1. Why is the law concerned about consent being “voluntary”? Who might pressure minors to make decisions that are not “voluntary”? Is this ever an issue in your life or family?

Makayla Sault

Makayla Sault was a 10 year-old girl from the New Credit First Nation near Caledonia, Ontario. Makayla was diagnosed with leukemia in January 2014, and was told by doctors that she would have a 75 per cent chance of survival if she received chemotherapy, but would likely die if she chose not to receive chemotherapy.

After 11 weeks of chemotherapy, which caused Makayla to suffer severe side effects, Makayla and her parents decided to stop using chemotherapy, and use traditional medicines instead. Makayla stated that she came to this decision after a

spiritual encounter in her hospital room. The hospital referred Makayla's case to the Children's Aid Society, but they chose not to interfere.

WATCH: <https://www.youtube.com/watch?v=NrF5wWQ4hIU>

READ: First Nations girl chooses traditional medicine over chemo: <http://www.cbc.ca/news/aboriginal/first-nations-girl-chooses-traditional-medicine-over-chemo-1.2644637>

READ: Makayla Sault's case raises questions about child welfare laws: <http://www.cbc.ca/news/aboriginal/makayla-sault-s-case-raises-questions-about-child-welfare-laws-1.2658155>

QUESTIONS TO CONSIDER:

1. Who do you think should be responsible for making the decision about Makayla's treatment? Makayla, her parents, the physicians, a court, or another individual or group?

QUESTIONS TO CONSIDER:

2. Should Makayla have been allowed to stop receiving chemotherapy? Why or why not?

3. How would you determine whether Makayla has shown the “capacity” to make this treatment decision?

4. Compare Makayla’s story with the case of A.C. in Manitoba. What are the differences in the two cases that may have led to different outcomes?

Substitute Decision-Making for Incapable Adults

An important, but perhaps also troubling, comparison to minors has to do with the role of guardians for adults who are mentally incapable. Like minors, adults who are deemed to be mentally incapable, require guardians that can make decisions on their behalf. In Ontario, decision-making on behalf of mentally incapable adults is covered by the *Substitute Decisions Act*. The Act defines adulthood as over the age of 16. The Act presumes that all adults are capable of making decisions in their best interests. For this right to be taken away, it must be proven that an adult does not have the capacity to make these decisions.

According to section 45 of the Act, a person is incapable of personal care if:

“the person is not able to understand information that is relevant to making a decision concerning his or her own health care, nutrition, shelter, clothing, hygiene or safety, or is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.”

If the court finds that this test is met, they may appoint a guardian to make decisions on this person’s behalf. Under the *Substitute Decisions Act*, a guardian of a mentally incapable adult has the power to do the following:

- a) make decisions related to the person’s living

arrangements, and provide for his or her shelter and safety

- b) represent the person in legal proceedings, and settle legal proceedings on the person's behalf (except for those related to the person's property or the powers of the guardian)
- c) have access to personal information, including health information and records
- d) make decisions about the person's health care, nutrition and hygiene
- e) make decisions about the person's employment, education, training, clothing and recreation and about any social services provided to the person

For medical decisions, the guardian must follow the *Health Care Consent Act*. For all other decisions, the guardian must take the following into consideration:

- a) the values and beliefs that the guardian knows the person held when capable, and believes the person would still act on if capable
- b) the person's current wishes, if they can be determined
- c) whether the decision will improve or worsen the quality of the person's life
- d) whether the benefit the person will receive from the decision outweighs the harm to the person from an alternative decision

E. (Mrs.) v. Eve

Eve was a mentally disabled adult who suffered from extreme expressive aphasia – a condition that made it extremely difficult to communicate with others. As a child, Eve lived with her mother and went to various schools in her area. After turning twenty-one, Eve’s mother, “Mrs. E.”, sent Eve away to a school for mentally disabled adults in another community. While at this school, Eve developed a close friendship with a male student, who was also mentally handicapped. The two had discussed marriage.

After learning about Eve’s friendship, Mrs. E. became worried that Eve might become pregnant, and was concerned about the emotional effect that the pregnancy and birth of a child could have on her daughter. She also worried that since Eve could not take on the responsibilities required of a mother, the responsibility for caring for the child would fall on Mrs. E, who was widowed and almost sixty at the time.

Mrs. E. applied to the Supreme Court of Prince Edward Island for the authority to consent, on Eve’s behalf, to sterilize Eve and thus prevent her from becoming pregnant. Since Eve could not consent to the treatment because of her condition, Mrs. E. sought the authority to give consent on behalf of Eve. Mrs. E sought this authority because she wanted to spare her daughter from the possible trauma of giving birth and the obligations of being a parent – obligations which Eve was incapable of fulfilling.

Justice McQuaid of the Supreme Court of Prince Edward Island found that Eve was not capable of informed consent, and granted Mrs. E. the authority to make decisions on her behalf. However, he also found that sterilization, being a serious surgical procedure that was not medically necessary, could not be consented to by Mrs. E. on behalf of her daughter.

He also considered whether the court could consent, on behalf of Eve, to the sterilization procedure. The ability of courts to make decisions on behalf of individuals who are incapable of doing so is referred to as the ***parens patriae* jurisdiction**. *Parens patriae*, a Latin phrase, literally translates to “father of the country”. The *parens patriae* jurisdiction, though described here in relation to a mentally incapable adult, can also be used by the court to make decisions on behalf of children.

Justice McQuaid recognized that the court could, as part of its *parens patriae* jurisdiction, order a mentally incapable individual to undergo a medical procedure if it was medically necessary or in the public interest. However, since the sterilization procedure in Eve’s case was only requested to prevent pregnancy, and was not necessary for her health, the court could not authorize it. He denied Mrs. E.’s application.

Mrs. E appealed the decision. At the appeal, the court appointed a separate guardian to represent Eve and ensure that her interests were protected. At this court appearance, the majority of judges, although they differed in their

reasoning, reversed Justice McQuaid's decision and used the court's *parens patriae* power to order that Eve undergo sterilization. Eve's court-appointed guardian appealed the decision, and the case went to the Supreme Court of Canada.

The Supreme Court addressed its power under the *parens patriae* jurisdiction. Writing on behalf of the court, Justice La Forest wrote that:

The *parens patriae* jurisdiction is, as I have said, founded on necessity, namely the need to act for the protection of those who cannot care for themselves. The Courts have frequently stated that it is to be exercised in the "best interest" of the protected person, or again, for his or her "benefit" or "welfare." ...

Though the scope or sphere of operation of the *parens patriae* jurisdiction may be unlimited, it by no means follows that the discretion to exercise it is unlimited. It must be exercised in accordance with its underlying principle. Simply put, the discretion is to do what is necessary for the protection of the person for whose benefit it is exercised... The discretion is to be exercised for the benefit of that person, not for that of others. It is a discretion, too, that must at all times be exercised with great caution, a caution that must be redoubled as the seriousness of the matter increases.

Ultimately, the Supreme Court of Canada agreed with Justice McQuaid that they could not order Eve to undergo

sterilization without her consent. They looked at evidence that showed that non-consensual sterilization can have significant negative psychological effects on mentally incapable individuals, and also that these individuals can show the same level of fondness and concern for their children as other people.

They decided that it would be unjust to deprive a woman of the privilege of giving birth purely for social or other non-health related purposes without her consent. Furthermore, since the *parens patriae* jurisdiction should only be used to make decisions that are in the best interests of incapable individuals, how other people – namely Mrs. E. – would be affected by the decision was irrelevant. Justice La Forest wrote:

The grave intrusion on a person's rights and the certain physical damage that ensues from non-therapeutic sterilization without consent, when compared to the highly questionable advantages that can result from it, have persuaded me that it can never safely be determined that such a procedure is for the benefit of that person. Accordingly, the procedure should never be authorized for non-therapeutic purposes under the *parens patriae* jurisdiction. ...

The Crown's *parens patriae* jurisdiction exists for the benefit of those who cannot help themselves, not to relieve those who may have the burden of caring for them.

QUESTIONS TO CONSIDER:

1. Why did Eve's mother want to have the doctors sterilize Eve without her consent?
2. Why did Justice McQuaid refuse to order the sterilization of Eve?

QUESTIONS TO CONSIDER:

3. Why did the Supreme Court refuse to order the sterilization? Do you agree with the Supreme Court's decision OR do you agree with Eve's mother that sterilization would be in Eve's best interests? Explain your reasoning. What type of decisions should a court be able to make on behalf of an incapable individual or child under their *parens patriae* jurisdiction?

4. Is there a difference between decision-making on behalf of a minor and on behalf of an incapable adult?

5. What does the comparison between mentally incapable adults and minors imply about youth? Is this a good association? Is this an important association under the law?

Key Terms

- Guardian
- Tutorship
- Curator
- *Parens patriae*
- *Paterfamilias*
- *Tutera mulierum*
- Magistrate
- Property
- Access
- Custody
- Sole custody
- Joint custody

Youth Agency and the Culture of Law

Minimum Age of Marriage



Minimum Age of Marriage

When we hear about marriage today, a whole host of ideas and thoughts come to mind. Marriage can mean different things to different people. In North America, and in many other parts of the world, marriage is often depicted as the natural culminating point of a relationship borne out of love or romance. However, individuals may marry for a number of other reasons, including those related to family tradition, culture, or religion. In some parts of the world, and in some families, these other reasons are the more usual basis for a marriage. Family members may play a minimal role in the decision to marry, or they may be closely involved in the process.

The association of marriage with love and romance has a long history, but was not a wide-spread reality until relatively recent times. In medieval history, for example, in many parts of the world, marriage was not legally possible for most people. Only wealthy land-owners and their families were able to marry, and most of those marriages were a way for families to cement their ties. Young girls and boys with money or from noble families would be married off to princes or princesses of different empires, making marriage a way to expand political and social networks. Today, we also see marriage as a topic that provokes cultural and political debate around the world including about the freedom to marry whomever one wants. Whatever cultural norms and values marriage may embody, today it is also a relationship that is regulated by state law. The law determines who can marry

whom, and the rights and responsibilities that arise from the marital relationship.

In Canada, the provinces and the federal government are responsible for regulating marriage. The federal government oversees marriage and divorce according to s. 91(26) of the *Constitution Act, 1867*. The federal power relates to the “legal capacity for marriage”, or who can marry whom. However, the provinces and territories are responsible for the **solemnization of marriage** under s. 92 (12) of the *Constitution Act, 1867*, or the requirements for the ceremony and registration, and for support and property division if the marriage breaks down under s. 92(13) of the *Constitution Act, 1867*, which covers property and civil rights.

What does this mean? In practice, this means that the federal government can define marriage by setting out rules and restrictions on who can marry, including the age below which an individual cannot legally marry.

The provinces and territories individually determine the requirements for the solemnization of marriage, including when a marriage license is needed, how to register the marriage, and what additional requirements there are for people under the age of majority (but over the minimum age set by federal law) such as parental consent or court approval.

Among the various aspects of marriage that provincial and territorial law regulates, one concerns **who can perform**

the marriage ceremony. For many people, marriage has major religious significance; they prefer their marriage to be performed in a religious setting and officiated by a religious authority, such as a minister, priest, pandit, rabbi, or imam, who is then also responsible for conducting the civil or legal aspects of the marriage at the same time. For others, marriage is only a civil commitment; they prefer a civil ceremony officiated by a person such as a judge. Whatever one's view of marriage, the person officiating the marriage must be legally authorized by the relevant provincial or territorial authorities to perform the marriage.

In Canada, some of the restrictions on who can get married, as determined by federal law, are as follows:

- Both partners must give free and informed consent to the marriage (section 2.1 of the *Civil Marriage Act*), without being forced or coerced by others. Being forced to marry is a criminal offence in Canada. If you have been forced to marry, you can consult a family lawyer about your options. The marriage would be considered legally valid by authorities, until you end it through a divorce or annulment.
- Both partners cannot be closely related by kinship (also called, consanguinity) or by adoption. The federal *Marriage (Prohibited Degrees) Act* prohibits an individual from marrying their parent, grandparent, child, grandchild, brother or sister, half-brother or half-sister.

- You cannot be married to more than one person at a time (section 2.3 of the *Civil Marriage Act*). Polygamy, which refers to a marriage that includes more than two individuals, is a criminal offence in Canada¹. If you were previously married, you must prove that you have divorced that other person or that they have died before marrying someone else.
- You must be over the age of 16 (section 2.2 of the *Civil Marriage Act*).

If you and your partner do not participate in either a religious or civil marriage ceremony that is legally registered, you may be part of an unmarried **common law partnership**.

Partners in a common law relationship are treated by many laws as if they were legally married for benefits and legal responsibilities, even though they haven't married. To be considered part of a common law partnership, you and your partner must meet the definition in each statute or regulation, usually that you have lived together for a certain period of time in a relationship characterized by some form of commitment or permanence. The same restrictions on who may marry (for example, restrictions on age, consanguinity, and polygamy), also apply to common law relationships.

Unlike marriage, provincial and territorial governments are responsible for rules on unmarried relationships such

¹ The criminal offence of polygamy can be found in section 293 of the *Criminal Code of Canada*. Although the section has been rarely used, it was upheld in 2011 by the Supreme Court of British Columbia. See: Reference re: Section 293 of the *Criminal Code of Canada*

as common law partnerships, and thus the requirements differ between the provinces and territories. Most countries outside of Canada do not include common law partners in their laws at all. In Ontario, common law partners are recognized in s. 29 of the *Family Law Act* as “spouses” where you and your partner have lived together:

- continuously for a period of at least three years, or
- in a relationship of some permanence, if you and your partner are the natural or adoptive parents of a child.

Under federal law, common law partners must have lived together for only one year. Common law partners are included in many of the rights and responsibilities that married couples have, including those regarding spousal support, child support, and child custody. However, common law spouses are often not subject to the same rules regarding property division if the relationship breaks down, or inheritance if the partner dies.

QUESTIONS TO CONSIDER:

1. Why does the state regulate marriage at all? Why not just leave it to individuals or communities to organize for themselves, as is the case with common law partnerships?
2. For marriages that are regulated by law, why does/should the law permit religious authorities to perform marriages? Shouldn't all marriages be performed by civil authorities only? If not, why?
3. What does it mean to be forced to marry? What are the different ways in which people might be forced to marry?

QUESTIONS TO CONSIDER:

4. The law prohibits marriage between certain relatives. It also prohibits being married to more than one person at a time. It also, as shown below, restricts underage marriage. Only recently has the law in Canada allowed same-sex marriage. How do we determine who cannot marry each other? Why is mere “choice” not enough to make a marriage valid under the law?

5. Are there other restrictions that you would suggest be applied to marriage?

QUESTIONS TO CONSIDER:

6. What do you think is the rationale for including unmarried common law partnerships in many legal benefits and responsibilities?

7. Do the requirements in the definition for an unmarried spouse (common law partner) under s. 29 of the *Family Law Act* make sense to you? Should common law partners be defined any differently?

Age of Marriage Across Canada

Why do we have an age requirement for marriage? As much as we might have our own views about what marriage means, the law interprets marriage as a contract.

From a legal perspective, marriage is an agreement between two parties that gives each party certain rights and responsibilities as against each other. To be allowed to create a contract, a person must have the capacity to enter into it. Minors are not considered to have the capacity or maturity to enter into contracts generally speaking, and therefore are precluded from entering marriage. The law deems minors incapable of making such a decision, and thus it would be unfair to make a minor responsible for a contract he or she enters. There is a limited exception for older minors, also called “mature minors”, as long as they also have the consent of their parents or the court.

There are different age requirements for marriage in Canada. The federal law sets out the absolute minimum age below which a person cannot legally marry. This age is set at 16 across Canada. It applies to all people who ordinarily live in Canada, regardless of where in the world they marry.

The provincial legislatures determine the age at which a child becomes an adult and so can consent to marriage for themselves. This age, which is also called the “full age of marriage” is set out in provincial and territorial marriage acts at either age 18 (in Ontario and six other provinces) or 19. All provincial and territorial marriage acts then set out additional

requirements for marriages between this full age of marriage and the federal minimum age. For example, a person between the age of 16 and 18 years of age (or 19 in some provinces and territories) can marry with specified forms of consent, such as parental consent or approval of the court.

The full age of marriage across Canada is as follows:

18 years: Ontario, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Prince Edward Island

19 years: British Columbia, Nova Scotia, Newfoundland & Labrador, Yukon, Northwest Territories, Nunavut

In almost all provinces and territories, the full age of marriage is the same as the age of majority (see, Handout on Age of Majority). The one exception to this is New Brunswick, which has an age of majority of 19 years, but a full marriage age requirement of only 18 years.

Additional Requirements for Marriages Below the Full Age of Marriage in Ontario

Every province and territory has some additional requirements for marriages of people who are over the minimum age of marriage (set at age 16 in federal law) but under the full age of marriage (set under provincial or territorial laws). The major exception allows minors who are below the age of majority, but above 16 to get married with the consent of a parent or guardian.

In Ontario, although the full age of marriage is 18, minors between the ages of 16 and 18 may get married with the consent of a parent or guardian. In some cases, 16 and 17-year-olds may be able to get married even without the consent of a parent or guardian. This generally happens in two scenarios: 1) if the parent/guardian cannot be located or is unavailable, and 2) if the parent/guardian is unreasonably withholding consent. In both these cases, the minor can apply to the court and ask a judge to dispense with the consent of the parent/guardian and allow the marriage. This is allowed under Ontario's *Marriage Act*:

Marriage Act

5. (2) No persons shall issue a license to a minor, or solemnize the marriage of a minor under the authority of the publication of banns, except where the minor is of the age of sixteen years or more and has the consent in writing of both parents in the form prescribed by the regulations.

6. (1) Where a person whose consent is required by section 5 is not available or unreasonably or arbitrarily withholds consent, the person in respect of whose marriage the consent is required may apply to a judge without the intervention of a litigation guardian for an order dispensing with the consent.

Allowing minors to marry with parental consent has been part of the law for many centuries. The reason for it is that “the human qualities considered necessary to found a viable marriage do not mature in all young people at the same age”, and parents were considered “the persons best equipped” to judge the maturity of their own children (1972, Uniform Law Commission of Canada). At the same time, parents “in some cases will have the wrong motives for saying “yes” or “no” too hastily. As one example, in *S.(A.) v. S.(A.)*, a 16 year-old girl was pressured by her parents into a marriage because the groom’s family had offered them \$2,000 if she agreed to marry him (see Handout on Forced Marriage).

Evans (Re) and Fox v Fox

What does a court consider when deciding whether a parent/guardian is unreasonably withholding consent to a marriage? And what do those considerations reveal about how the law views the agency and capacity of young teenagers? In two separate Ontario cases, two young women under 18 appealed to the court after their parents refused to consent to their marriage.

In *Evans (Re)*, Nicole Amanda Evans was 17 years old, and had a baby with her boyfriend, Luke Tumber, who was 21 years old. Although Nicole and the child still lived with her parents, Luke was financially supporting the two. She wanted to live with Luke, but her beliefs prevented her from doing so without marrying first. She felt that her friends and family already ostracized her because she and Luke had pre-

marital sex. She believed that marrying Luke would ease the situation.

As Nicole was under 18, Ontario's *Marriage Act* specified that she needed the consent of her mother and father to marry. Nicole's mother agreed to support the marriage. However, Nicole's father refused to give his consent because he did not approve of Nicole's prior conduct.

Using s. 6(1) of the *Marriage Act*, Nicole applied to the Ontario Court of Justice to dispense with her father's consent and allow the marriage.

Justice Pugsley heard the case. He decided to allow Nicole's application, dispensing with her father's consent and thereby allowing the marriage. In describing his reasoning, Justice Pugsley stated the following:

The facts of this case are compelling in both the urgency demonstrated by the applicant's affidavit and the applicant's sincere desire to regularize the status of her relationship and that of her infant child in the eyes of her family and her community. Further, it seems to me that it would be perverse to take a position that the applicant and her fiancé are mature enough to create, to support and ultimately to parent a child together but are to be denied the status of married persons in their community until the applicant's eighteenth birthday by the simple expedient of a parent's withholding his consent to their marriage because he does not approve of the applicant's

conduct. The refusal to consent may be based upon the sincerely held beliefs of the applicant's father and may be, in that context, reasonably withheld by the applicant's father. In my view, however, the applicant's father's consent to marriage has been arbitrarily withheld within the meaning of section 6 of the Act when the context of the applicant's situation is considered and applied to reasonable societal norms.

In *Fox v Fox*, 16-year-old Lorie Anna-Marie Fox from Brampton applied to the court after both her parents refused to consent to her marriage. Lorie had recently found out that she was pregnant, and wanted to marry her fiancé who was also 16 years old. Her fiancé recently became employed, and believed that this job would be steady.

Lorie was presently living with her fiancé at his parents' house. Her fiancé's parents first opposed the marriage, but the couple refused to be kept apart: they ran away with each other on at least one occasion, and could not be separated. The couple also stated that they would live as a common-law couple if they could not get legally married. After failing to convince the couple to wait for marriage, the fiancé's parents chose to support the marriage as they believed the couple's commitment was strong and it would be too difficult to fight it.

Lorie's parents, however, firmly believed that she should wait until she was 18 to be legally married. They did not think that Lorie was ready for such a commitment. They also believed

that her fiancé was a bad influence, and had encouraged Lorie to use drugs and alcohol. Lorie's parents thought that her behavior had changed since she had become involved with her fiancé, to the point where she was no longer exercising mature and independent judgment. While she was once a good student, she had now dropped out of school, and began referring to her parents as "Mrs" and "Mr" rather than "Mom" and "Dad". They also told the court that Lorie's fiancé had "flashed" himself to them on one occasion, which the fiancé denied. Lorie's parents were willing to have her stay at home with the baby, or support her financially if she chose to live with other relatives.

After reviewing the facts, Justice Karswick decided not to dispense with the parents' consent (and therefore, prevented the marriage from occurring), stating that:

The [Marriage Act] specifically confers upon the parents the responsibility for deciding whether to consent to the marriage of a child under the age of eighteen. It is a matter of parental discretion and should not be abrogated unless that discretion is exercised in an unreasonable or arbitrary manner.

For very legitimate and considered reasons, both sets of parents were originally opposed to this prospect of marriage. The fiancé's parents have now changed their position and are supportive. Their decision was arrived at in a considered and proper manner.

The Applicant's parents however have not changed their position and remain opposed.

I believe that both sets of parents have agonized over the situation and both, in my view, have acted appropriately even though they now hold different views.

More to the point, and in these circumstances, I am unable to find that the Applicant's parents are withholding their consents unreasonably or arbitrarily.

On the basis of this finding, I cannot substitute my discretion for the discretion of the parents who are conducting themselves in a concerned and legitimate manner.

QUESTIONS TO CONSIDER:

1. How did the court in *Re Evans* decide if the father was reasonable or unreasonable in refusing his consent?
2. What do you think it means for a parent or guardian to “unreasonably or arbitrarily” withhold consent?
3. Why do you think *Re Evans* and *Fox v Fox* were decided differently? Do you agree with these decisions? Why or why not?

Additional Requirements Below the Full Age of Marriage in Other Provinces

Before June 18, 2015, when the federal *Civil Marriage Act* was amended to set age 16 as the absolute minimum age for marriage across Canada, the federal minimum age was 12 for girls and 14 for boys. Many provinces and territories allowed minors who were even younger than 16 to marry in certain circumstances.

In British Columbia, for example, the full age for marriage is 19, but individuals between 16 and 19 can get married with the consent of their parent(s)/guardian(s). Moreover, British Columbia's *Marriage Act* also specifies that minors who are younger than 16 may get married with the consent of the court. The Act gives the court the power to allow a marriage for individuals younger than 16 where it is "shown to be expedient and in the interests of the parties". As noted above, marriages below the age of 16 are no longer possible in Canada, and so these provisions in the British Columbia law no longer operate.

In Alberta, Prince Edward Island, and the Northwest Territories, the additional requirements under the full age of marriage are more specific: a court could allow a marriage for a minor under the age of 16 only where one of the parties was a young girl who was either pregnant or had a child. Again, these provisions no longer operate.

In 2015, the Canadian government amended the federal *Civil*

Marriage Act to raise the absolute minimum marriage age to 16 across Canada. Now, minors in Canada who are younger than 16 are no longer allowed to get married in any Canadian province or territory regardless of the circumstances. Moreover, no minor under 16 years of age who resides in Canada can legally marry outside Canada either.

The bill also introduced a new criminal offence to celebrate (to officiate, with or without legal authority), aid or actively participate in a marriage ceremony knowing that one of the parties to the marriage is younger than 16 years of age (section 293.2 of the *Criminal Code*). This offence does not apply to individuals who are passive participants at the wedding ceremony. It applies to those who knowingly and willingly took some active steps with a view to helping the marriage ceremony take place, such as being a signatory witness or transporting the underage person to the ceremony. In addition, the bill expanded section 273.3 of the *Criminal Code* to include the removal from Canada of a child under the age of 16 who ordinarily resides in Canada for the purposes of an underage marriage.

QUESTIONS TO CONSIDER:

1. Do you agree that a court should no longer have the power to allow a marriage for a minor under 16, even where the parents or guardians consent? Should courts have to review all cases where minors want to marry even over age 16?

QUESTIONS TO CONSIDER:

2. Do you agree that there should be exceptions to the full marriage age if a young woman is pregnant or the couple has a child?

a) In what circumstances should these exceptions apply? Should it apply if both the mother and father of the child (born or unborn) are minors? What if the mother is a minor, but the father is an adult?

b) Conversely, should a young father be allowed to seek an exception to the full age of marriage if he is a minor, but the mother of his child is not?

A(E) (Next Friend of) v Manitoba (Director of Child & Family Services) and J v J

Emman Al-Smadi was 14 years old in the 1990s when she met Ra ‘a Ahmed Said, who was 26 years old. Emman was from Winnipeg, and Ra was a PhD student in engineering who had recently come to Canada from the Middle East. They were both Muslim, and had met a year earlier at a religious event. At the time, Emman lived with her father who was given custody over her after her parents divorced.

Emman and Ra decided to get married. Emman’s father gave his consent to the marriage, and Emman and Ra went through an Islamic religious marriage ceremony.

Although Emman and Ra were now married according to their Islamic faith, they were not yet married under Canadian law. Indeed, under the criminal law today, if two people in this situation were to have sexual relations, the 26 year old would be violating the criminal law because he is more than 5 years older than the 14 year old. According to Manitoba’s *Marriage Act* at the time, no one under the age of 16 could marry unless a judge (on behalf of the court) gave consent. Emman applied to the Family Court in Manitoba for consent to marry Ra. As she was a minor, the application was made on her behalf by her father as her legal guardian and custodial parent. As part of her application, Emman and her father submitted evidence that it is part of their Islamic faith that a girl who has reached puberty may marry if she wishes with the consent of her father. Emman also provided an affidavit stating that she was

freely and voluntarily choosing to marry.

Shortly before the case was heard, Emman found out that she was pregnant. She did not tell the court, however, because she believed that the court already had enough information to make a decision.

After the case was heard, Justice Wright, on behalf of the family court in Manitoba, rejected the application. Justice Wright stated that he would need more evidence to decide whether allowing this marriage would protect both Emman's best interests and the interests of society.

Justice Wright also discussed why the need to protect children under 16 is valued in Canada.

Canadian mainstream culture has identified values that children under 16 are still in need of protection for many reasons, including issues relating to their degree or level of maturity and their capacity to accept necessary responsibilities. Provisions in the *Criminal Code of Canada*, the *Young Offenders Act* and family law and estate legislation are illustrative of this.

Canada is indeed a pluralistic society and the rights of all people are recognized and carefully protected. Nevertheless, certain basic values and standards now exist that are the product of hundreds of years of development. Their aim is to protect all citizens and to provide the foundation upon which our successful Canadian

democratic system is based. From time to time they may conflict with specific religious, moral or cultural practices and beliefs. Subject to reasonable compromise any such conflict must be resolved in favour of that general public interest.

Where fundamental values are applied they effectively preclude marriage of children under 16 years. Whatever discretion a judge may have in this area should be exercised in very exceptional and rare circumstances. Pregnancy of the child, in the context of other appropriate considerations, may be an example of circumstances where consent would be justified.

To allow a child under 16 to marry would go against Canadian values concerning the protection of minors. Not knowing that Emman was pregnant, Justice Wright decided that he could not consent to the marriage. Based on the evidence he had before him, the conflict with Emman's religious practices and beliefs did not outweigh the general public interest in protecting children under 16 from taking on legal responsibilities that are beyond their capacity and level of maturity.

QUESTIONS TO CONSIDER:

1. Do you agree with Justice Wright's decision?

a) Do you agree with his reasoning?

2. Do you agree that the public interest in protecting minors should outweigh individual religious beliefs or should Emman and Ra have been allowed to get married under Canadian law because they were already married under religious law?

3. Do you agree that marriages between 16 and 18 should now require the approval of the court? If so, what kind of evidence would convince you to allow Emman and Ra to get married?

After the decision, Emman reapplied to the court, this time including evidence of her pregnancy. By this point, Emman was 15 years old and completing Grade 10 through distance education with eventual plans to go to university, while Ra continued to work on his PhD. Emman and Ra had also started living together, and planned on continuing to live together regardless of the court's decision.

This time, the court, in a decision made by Justice Schulman, accepted the application and gave consent to the marriage.

The judge reviewed how the minimum age for marriage had changed throughout history:

Between the 18th century and early part of the 20th century, young people were permitted to marry without parental consent, in the case of boys, at the age of 14, and in the case of girls, at the age of 12. The law of England, Canada, and many other countries permitted marriage at these young ages. Incredibly, in the early period it was not uncommon for parents to arrange marriages for their children as early as the age of four years. The rule evolved that marriages of children under seven years were void, but even marriages between children who were above seven and below the permitted age were treated as voidable at the instance of one of the parties to the marriage. In 1906 the Manitoba legislature passed a marriage Act which provided that persons who wished to marry must be 18 years of age, but that persons over the age of 16 may marry with the consent of their parents.

Section 16 of the statute provided that no licence shall be issued to any person under the age of 16, “except where a marriage is shown to be necessary to prevent the illegitimacy of offspring”. Before long, all Canadian provinces raised the minimum age, and many of them provided for a marriage license to issue to cover the case where a young woman was pregnant. The above-mentioned provisions remained the law of Manitoba until 1970, when the *Marriage Act* was revised extensively. In that year, the statute was changed to its present form by eliminating the provision for an automatic right to a license at the age of 16 in the event of a pregnancy and by providing a court with the discretion to give consent to a marriage even if the parties are below the age of 16 years.

The increase in the minimum age for marriage came about by a widespread recognition that there is a point at which children lack the required maturity for marriage.

Justice Schulman looked at several factors in deciding whether or not to give consent to the marriage. He determined that Emman had freely given her consent, that Emman and Ra had made suitable arrangements for the child, and that the fact that they were living together and not married caused an inconvenience for Emman when she sought medical assistance for her pregnancy. Furthermore, the fact that her father had given consent, and that Emman intended to continue her education supported Emman’s claim.

Justice Schulman also assessed the maturity of Emman and Ra. He found both parties mature, and in particular, he found that Emman had above-average maturity for her age. In making this decision, he looked at evidence that Emman and her father submitted, and found that:

From about the age of 10, [Emman] bore a major responsibility for the household chores, as her mother was no longer living in her home. She assumed a major role in cooking, cleaning and caring for her younger sister. In the course of time, she took a baby-sitter's course, and inquiries made by the Department of Health and Social Services in the spring of 1993 show that her teachers and counselors reported positively as to her maturity and responsibility.

Based on these findings, Justice Schulman concluded that it was in the interests of the child, the parties, and the public to grant consent to the marriage.

In the case of *J v J*, however, the court came to the opposite conclusion. Even though K.E.J. who was 17 years old, was pregnant, the court refused her application to dispense with her parents' consent to marry her 19 year-old boyfriend, M.G.B. Justice McKercher found that:

I do not think that it will be in the best interest of the applicant, the expected child or the public that she be permitted to marry Her desire to marry now arose when she discovered her pregnancy. She is young,

inexperienced and unprepared for the responsibility of married life, as is B., and her parents, I am satisfied, know what is in her best interests.

The exceptions in many provincial and territorial *Marriage Acts* where the underage minor was pregnant began before Canadian laws were amended to abolish the legal concept of illegitimacy. In times past, laws treated children differently if their parents were not married at the time they were born, called “out of wedlock”. Justice Huddart explained the history in *Re MacVicar*:

If the concept of illegitimacy had its roots in the view that a child born out of wedlock was the product of her mother’s weakness, and thus her burden, the enactment of paternity legislation reflected a changed social reality and a recognition of the weakness of the father. Illegitimacy is no longer a concept recognized by the law. The *Charter of Rights Amendment Act*, 1985 reflects the pluralism of family arrangements in the 1980’s. It acknowledges that some parents choose not to marry. So does the *Family Relations Act*. So do the *Estate Administration Act*, R.S.B.C. 1979, c. 114, and the *Family Compensation Act*, R.S.B.C. 1979, c. 120. Moreover, ordinary experience would inform every fair-minded person that parents are choosing in ever-increasing numbers to have children without marrying. Legislation recognizes that the child should not be penalized for this parental decision.

QUESTIONS TO CONSIDER:

1. Do you agree with Justice Schulman's decision? Do you agree with Justice McKercher's decision? Why or why not?
2. Both judges talked about the interests of the young people, their new child, and the public. Do you agree or disagree that these two decisions were in the interests of all three parties?

QUESTIONS TO CONSIDER:

3. Do you agree with the factors that Justice Schulman looked at in determining whether to give consent? Are there any that should not have been looked at? Are there any factors that you think are important and should be added?

4. If you were a judge and the approval of the court were needed for marriages of people who are 16 and 17, what evidence would you require to determine whether or not a person is was mature enough to marry? Is the evidence that Emman and her father provided (e.g. that she had a major role in housework and babysitting and was judged as mature by her teachers and counselors) convincing? Why or why not?

QUESTIONS TO CONSIDER:

5. As we've seen throughout this handout, pregnancy used to be an important factor considered by the courts when deciding whether to allow a female minor to marry, although it is not always now. Do you agree or disagree that it should still be an important factor for individuals who are 16 or 17 and want to marry?

6. What does the current law tell us about the values of Canadian society at large? Do you agree or disagree that Canada support a ban on early and underage marriage?

Key Terms

- Marriage
- Absolute Age of Marriage
- Full Age of Marriage
- Consent
- Contract
- Common Law Partnership
- Divorce
- Kinship
- Solemnization

Youth Agency and the Culture of Law

Forced Marriage



Forced Marriage

A forced marriage occurs when a person is pressured – whether by parents, relatives, community members or any other third party – into marrying against his or her will. These individuals experience coercion from others, which may be in the form of threats or abuse, including emotional, physical, financial, or sexual abuse. People may be forced into marrying for a variety of reasons, including beliefs stemming from their religion or culture, financial reasons, or immigration reasons.

In some cases, those being coerced to marry do not necessarily feel or realize that they are being coerced. There may be no physical threats or exchanged words of emotional abuse. Rather, a person may feel like they are expected to get married and have no other realistic options. For example, they may agree to marry because they actually fear the consequences if they voice their opposition to the marriage, such as being ostracized from the family with little or no resources to survive on their own (see, Handout on Emancipation). In these cases, where there is no express or obvious forms of outright coercion, the person is not choosing his or her spouse voluntarily, and thus also can be described as being forced to marry.

Forced marriages are different from arranged marriages. In many cultures, traditions, and family settings, parents and other elder members play active roles in facilitating the marriage of their sons, daughters, nieces, and nephews. In an arranged marriage, family members may present or help

choose from among possible marriage partners. However, the key distinction between forced marriage and arranged marriage is that the person getting married still makes the final choice about whether or not he or she wishes to marry the marital candidate. That is, the person getting married gives their free and informed consent to the marriage.

An Ontario report released in 2013 showed that individuals of all genders and from all cultures, religions, backgrounds, and sexual orientations can experience forced marriage. Forced marriages are not limited to specific communities, cultural or religious groups. Nor are young women the only ones forcibly married. Individuals of any age can also be forced to marry. However, young people, especially those under the age of majority, are especially vulnerable to pressure from their family given that they are often dependent on their family for financial and emotional support.

Forced marriages may take place in Canada, or they may take place abroad if an individual is taken out of Canada to marry. This is especially the case for those who are under the age of majority or under the absolute minimum marriage age limit, which is 16 years of age across Canada. As the absolute minimum age for marriage is part of federal law, it applies to individuals who reside in Canada, whether they marry in Canada or elsewhere in the world, but many people may not know this and may seek to marry their minor child (under age 16) outside of Canada.

Can you be Forced to Marry?

Both federal and provincial laws limit who can get married in Canada. One of these limitations is that the parties to a marriage must both give their free and informed consent to marry (section 2.1 of the *Civil Marriage Act*) without being pressured or coerced by others.

Depending on the province you live in, you must also meet additional requirements if you are age 16 or over, but under the full marriage age. In Ontario, the full age of marriage, or the age at which you can get married on your own without any additional requirements, is 18. If you are 16-18, you can still get married as long as both your parents consent (see Handout on Minimum Marriage Age), or with the agreement of the court. But even in these cases, your parents' consent does not mean they also have the power to determine who you marry. The choice to marry a particular person is one that you must freely make on your own. Your choice of spouse must also be informed: you must clearly understand the facts of the situation and the consequences of marrying.

In June 2015, the federal government passed new legislation to make forcing an individual to marry a criminal offence. If you were forced to marry, you can consult a family lawyer about your options. The marriage would be considered legally valid by authorities, until you end it through a divorce or annulment. This applies to marriages of Canadian residents whether they took place in Canada or outside of Canada.

It is now an offence in criminal law to celebrate (meaning to conduct the marriage ceremony with or without legal authority), aid or actively participate in a marriage ceremony with full knowledge that one of the parties is marrying against their will (section 293.1 of the *Criminal Code*). This offence does not apply to individuals who are passive participants at the wedding ceremony. It applies to those who knowingly and willingly took some active steps to help the marriage ceremony take place, such as being a signatory witness or transporting the person being forced to marry to the ceremony.

It is also now an offence to remove from Canada a person under the age of 18, who is ordinarily resident in Canada, for the purposes of forcing that young person to marry in another country (section 273.3 of the *Criminal Code*).

There is also a new peace bond available in the *Criminal Code* to prevent forced marriages from taking place (section 810.02). A peace bond is not a criminal charge, but a signed promise to keep the peace and be on good behaviour for a period of time. If a person has reasonable grounds to believe that he or she, or another person will be forced into a marriage or taken outside of the country for a forced marriage (in the case of someone under 18 years of age), that person may apply to the court to have peace bonds taken out against the individuals they fear will commit a forced marriage related offence. The court can make orders that would be particularly useful in specifically preventing forced marriage, whether in Canada or abroad, such as ordering

the individual to surrender travel documents, to refrain from making arrangements or agreements in relation to the wedding, or to participate in a family violence counselling program.

In addition, general criminal offences (which existed prior to the new legislative changes) may apply if force is used to impose a marriage. For example, a person who forces you to marry may face a charge of kidnapping, forcible confinement, uttering threats, assault, extortion, or sexual assault.

Under Canada's immigration laws, spouses from abroad who are sponsored by Canadian citizens or permanent residents may be denied entry into Canada if their marriage to a Canadian is perceived by officials as not being genuine, which may happen where it was forced.

Forced marriage also violates international human rights law. The *Universal Declaration of Human Rights* is an international document that influences Canadian law. Article 16.2 of the declaration states that: "Marriage shall be entered into only with the free and full consent of the intending spouses".

Canada is also bound by the *Convention on the Rights of the Child*. This Convention specifically addresses the rights of children, and has several provisions that may be relevant in a situation where a child is forced to marry:

Convention on the Rights of the Child

Article 11: State Parties shall take measures to combat the illicit transfer and non-return of children abroad.

Article 12: State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

Article 19: State Parties shall take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

The *Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, which Canada has signed and ratified, also addresses forced marriage:

Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)

Article 16(1): State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent. [...]

Canada has not, however, signed the 1962 *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*, which also specifies that marriages must be entered into with the full and free consent of both parties.

In 2013, Canada and Zambia introduced a UN resolution calling for an end to child and forced marriages. The resolution was adopted by the Human Rights Council and has been co-sponsored by over 100 countries around the world. The resolution recognizes that child marriages and forced marriages are human rights violations with negative impacts on the health and education of young people.

Against their Will: Inside Canada's Forced Marriages

Forced marriage is one of the last taboos to break. A new law could make it a crime. So why do those who champion prevention oppose it?

Rachel Browne

Maclean's, January 5, 2015, pp. 20-24

<http://www.macleans.ca/news/canada/against-their-will/>

Lee Marsh

Two weeks after her 18th birthday, Lee Marsh was sitting at the kitchen table one Sunday, reading the Bible, when her mother came in and announced that Marsh would marry a 20-year-old member of their Jehovah's Witness congregation in Montreal. The girl was stunned; she had met her husband-to-be just once. Five weeks later, it was done.

For a few months before, her mother had been shopping her around while sizing up men in the congregation – some more than 20 years older – looking for a suitable husband. She made Marsh wear a tight, low-cut white dress bought for the outings. “I hated wearing it. I’ve always preferred to be covered up,” Marsh says. “But my mother really wanted me to be attractive to these men.” Marsh’s mother had rejected all the suitors up to that day in 1970 when she announced the match. “I knew I wasn’t allowed to have an opinion. This wasn’t a woman that you said no to.”

Marsh thought about the leather strap hanging by the front

door, the one her mother used when the children – Marsh was the eldest of four – dared to defy her. They never knew what would set her off; two weeks before, Marsh had got it for not cleaning the house properly. So Marsh buried the feelings of anger and betrayal she felt toward the woman who had abandoned her twice already in her short life: After her parents divorced when she was nine, she was left behind in Toronto with a father she says sexually abused her; later, in Montreal, when she had returned to her mom, she says her mother's Jehovah's Witness boyfriend also sexually assaulted her, and she was sent into foster care.

In their congregation, the pressure to get married early was intense. Breaking off the engagement was not an option.

“Once the announcement was made in church that we were getting married, I was trapped,” she says. “I couldn't back out of it.” Marsh would do anything to stay in her mother's good graces; she couldn't bear the thought of losing her again.

During the ceremony, Marsh was terrified. “I wanted to run, but I didn't dare.” She had told her husband about her history of sexual abuse, but he told her not to worry, that they would get through it together.

Two weeks into the marriage, Marsh realized just how much she resented it. Her husband started demanding sex constantly and she felt it was her duty to submit.

“The Witnesses believe that when you're married, you are obligated to deliver sex whenever your husband wants it,”

she explains. “It brought back everything I had gone through as a child and I became extremely depressed and suicidal.” But she stayed, had two children and, for 15 years, endured what she describes as incessant verbal and sexual abuse from a man who eventually became a church elder. That meant he passed judgment on others in the congregation, deciding whether or not they had sinned and how they would be punished. In 1984, Marsh decided to leave. In addition to a legal, secular divorce, she needed a “spiritual” divorce, otherwise, the church would still consider her his wife. In a letter to church elders, she writes that she tried to be a “good, submissive wife,” and “almost always pushed aside my personal feelings so that he would be happy.” She details the emotional and sexual abuse, but does not cite forced marriage; only recently did she even hear the term. “It wasn’t really applicable at the time. I wanted out of the marriage, not because I was pushed into it, but because of the abuse that was triggering all of my past abuse,” she says.

....

Shortly after Marsh sent that letter to her church, the elders “dis-fellowshipped” her and announced it to the congregation; Marsh packed her bags and moved out. She says her husband bribed her children to stay with him, but, in 1986, she obtained custody of her two daughters, then 14 and 10, and went on to study at Montreal’s Dawson College and Concordia University to become a counsellor for abused women and children. Now 62, Marsh frequently hears from ex-Jehovah’s Witnesses who say they, too, were forced to marry. “I used to think I was the only one, but I’m hearing more and more women saying they were forced into

marriage. I'm flabbergasted, because I thought I was alone." Jehovah's Witnesses in Canada would not directly answer questions regarding Marsh's claims, but a spokesperson said in an email that "forced marriage, and spouses being required to submit to marital acts against their will, is repugnant and contrary to what Jehovah's Witnesses believe, practise and teach." They pointed to their website for information on dis-fellowshipping, which states: "If a baptized Witness makes a practice of breaking the Bible's moral code and does not repent, he or she will be shunned or dis-fellowshipped," and also explains that dis-fellowshipped people who demonstrate a desire to change their ways are "welcome to become members of the congregation again."

Antua Petrimoulx

Born Manuel Aguilar in Reynosa, Mexico, in 1965, Petrimoulx was 20 when her mother, a devout Catholic, forced her to marry a woman, even though Petrimoulx knew, deep down, she was female with no desire for other women. Her mother and brothers taunted and punished her for behaving like a girl and having relationships with other boys. In her late teens, they forced her to have sex with a female prostitute in a hotel room and, shortly after that, her mother told her she would be marrying a woman in order to fit in with the community and become a real man. The couple had sex once, on their wedding night. After a couple of months, Petrimoulx moved back home, where the abuse escalated. Her mother forced her to take anti-psychotic medications, and often locked her in her bedroom. When she did make it out of the house

dressed as a woman, the police frequently targeted her. She says she was once raped and burned with cigarettes by police officers in the back of their squad car. In 2005, she fled to Canada, where she filed an application for refugee status as a victim of forced marriage and police brutality. Her claim was accepted and she now lives in Windsor, Ont. Although she is safe, Petrimoulx suffers from depression, and has tried, and failed, to write the hairdresser's exam five times; the stress and anxiety were too much and she could not concentrate. She cannot work and her mental health is precarious.

Elizabeth in Hamilton

Elizabeth, who does not want to use her real name for fear of alerting her British ex-fiancé, whom she believes would jeopardize the criminal investigation, was raised in Hamilton by parents who belonged to the Church of God. It's a distant offshoot of the Christian Open Brethren movement, which originated in 19th-century England and Ireland. The precise number of members is unknown, but scholars estimate there are 100 or so congregations around the world.

Elizabeth says church elders were very involved in her family's day-to-day decisions, and friendships outside the community were discouraged. When she was in Grade 3, she recalls being pulled out of class by a social worker and taken to a room, where she was asked if she was fearful of being married off to older men. "Thankfully, that wasn't happening, but all community members are required to marry within the group. The penalty for not doing so is punishment or expulsion,"

she says. “The attitudes of the leaders toward their marriage practices are: If you don’t like it, just leave.”

At age 14, Elizabeth started receiving letters and gifts from men in her church and partner churches abroad who were interested in courting her. “They were also coming to visit all the time, making a point of being with my family, trying to get their foot in the door.” She wasn’t interested, and tried her best to ignore the advances, even graduating from high school. She was trying to figure out what she wanted to study at McMaster University when a church elder in his 30s came to town in search of a bride. One of his relatives began sending her tapes of sermons, in which he described how parishioners must only marry other church members or face excommunication. The church told the 25-year-old she would be cut off from her family if she didn’t marry the English church leader. “I was feeling pressure from the community, like a cloud hanging over me,” she said. “It’s a very difficult place to be in, because you’re being told the judgment of God is on you if you don’t conform.”

In a written response to questions about Elizabeth’s case, a spokesperson for the Church of God in Toronto says it’s not aware of any forced marriages in its congregations, and that members who may have come to Canada to find a spouse “probably came more in hope than expectation!”

In 2007, Elizabeth’s future husband brought her to England to prepare for the wedding. She thought she would live with someone else until they were married, but, when she

arrived, he told her she had to live with him right away for immigration purposes. She was only allowed to leave the house to run errands or go to church. “I was being kept at home and told how to dress and the things I could or could not wear as the wife of an elder.”

She says he began raping her on a regular basis, once forcing himself on her in his car. It continued even when she was ill. “Rather than helping me through this sickness and getting me medical attention,” she said, “he’s demanding things sexually from me, premaritally, which is unusual in the Brethren.” In its letter, the Church of God Toronto states that “any church member engaging in premarital sex would be excommunicated from the Church for committing a serious sin.”

In 2008, Elizabeth’s fiancé brought her back to Canada, where she thought she would be retrieving the rest of her belongings. Instead, she says he took her to a room at the Holiday Inn by Toronto’s Pearson airport and sexually assaulted her for the last time. He flew back to England alone and she hasn’t seen him since.

Elizabeth says her parents and church elders ignored her complaints about the abuse and her plea to investigate and remove her ex-fiancé from his leadership role. Women in the church told her it was her fault the engagement fell through and that she should marry someone else. After writing church leaders about her grievances, she was officially excommunicated in a letter dated Sept. 26, 2011, for the “sin

of unforgiveness,” specifically, for being unable to forgive her ex-fiancé and the church, but the letter does not go into further detail. “We do not intend to reopen discussion about those things. We have done all that we possibly can do as an oversight in Toronto. Local U.K. oversight has agreed, our District oversight has agreed, and those things must now be left with the Lord,” the letter to Elizabeth reads.

The Church of God Toronto wouldn’t comment on Elizabeth’s allegations, but says it would not “tolerate or permit the occurrence of sexual abuse by elders or church members” and would notify the police if it occurred.

Three years ago, Elizabeth was riding the bus in northeast Toronto when she saw an ad for the Agincourt Community Centre’s forced-marriage project, with the telephone number for its hotline at the bottom. In that moment, she realized what had happened to her, even though, in her case, no marriage had occurred. When she mustered up the courage a few weeks later to call, she got Shirley Gillett on the line. The program coordinator had been raised in an Open Brethren church outside Orillia, Ont., a more liberal offshoot of the Brethren movement. “I couldn’t say that I was surprised,” Gillett recalls. “We had suspected that we were going to find forced marriage in small Christian sects in Canada.” Gillett invited Elizabeth to join her group of six or so survivors, which meets monthly. Elizabeth is now co-operating with the Tees Valley Inclusion Project, a non-profit group based in Middlesbrough, England, which is looking into more than 100 forced-marriage cases. Hers is their second Christian case.

U.K. government authorities are reviewing the evidence in her case to see whether a conviction is possible.

Elizabeth, now 33, lives in Toronto and has a long-term boyfriend. When she tries to explain the forces that conspired to keep her in the relationship, the despair seeps through the sentences that tumble out of her computer. “I felt damned if I do (get forced into marriage, because I am a lover of freedom), and damned if I don’t (get married ‘in the lord,’ because I could not function in a Brethren society, and there are some things about the way of life I enjoy). It’s like being sawn in half and torn between two realities – painful. It’s mental torture. I felt trapped.”

After excommunication, her parents wrote her out of their will in what she calls a classic Brethren tactic to make her feel socially rejected. “My parents are being very influenced by the Brethren and it REALLY upsets me,” she wrote in a recent email. “I feel like I’ve lost my own family members.”

She warned her parents not to go to any Brethren weddings, because even celebrating a forced marriage could mean a jail sentence under Canada’s proposed legislation. Elizabeth is disappointed that SALCO is opposed to Bill S-7, because she feels the new law would help young men and women like herself who are born into the Brethren community. The day the law passes, she will be free of the shame and guilt of her failed relationship, the abuse and her excommunication. Finally, there would be vindication: the acknowledgement that what happened to her was a crime.

Lev Tahor, An Ultra-Orthodox Hasidic Jewish Group

More recently, 200 members of Lev Tahor, the ultra-Orthodox Hasidic Jewish group that originated in Jerusalem in the 1980s, moved to Quebec, where they lived for 10 years. Many fled to a small community in southwestern Ontario in 2013 after they heard that Children's Aid was about to remove their children based on allegations that they were being confined to basements and forced to marry older men, among other abuses. An ex-member of the group testified that the goal of the community was to marry children by age 13. They fled again in March to Guatemala, although several children have since been returned to the Toronto area, where they are in foster care.

Key Background Information

It may seem strange, even impossible, that someone could be forced to marry against her will. But, like sexual assault – and, more recently, human trafficking – the curtain is being pulled back on what has been happening in Canada, and around the world, for centuries. In some nations, such as Norway, Belgium, Pakistan and the United Kingdom, forced marriage is a crime. Next year, Canada is expected to join that list when Bill S-7, which adds forced marriage to the Criminal Code, is approved.

In September 2013, Toronto's South Asian Legal Clinic of Ontario released a report that counted 219 confirmed or suspected cases of forced marriage in Ontario and Quebec

from 2010 to 2012, information obtained through interviews and a survey filled out by service providers from shelters, legal clinics, immigration agencies and youth groups. The people, the vast majority of whom are women, came from a wide range of religious groups: 103 were Muslim, 12 Christian, 44 Hindu, 24 were unsure of their religious affiliation, and five had none. Almost half were Canadian citizens and, in most cases, family members were the perpetrators. People were taken out of Canada to get married in 57 per cent of cases. Yet the report points out that the Department of Foreign Affairs “confirmed they had provided assistance” to just 34 individuals from 2009 to 2012.

DEFINITION: Forced marriage always involves pressure to wed against a person’s will, under physical or emotional duress, or without free and informed consent, according to definitions from international law and human rights groups. The main reason people submit to a marriage is because they do not want to disobey or disappoint family or church.

Very little data exist on forced marriage in Canada, but numerous court cases and anecdotal evidence suggest it’s been happening for more than a century, from coast to coast. Only in the last decade have researchers and advocacy groups started to grasp its prevalence and scope.

Since 2011, Foreign Affairs Minister John Baird has sought to make Canada a world leader in combatting forced marriage around the world, which he has said can be eradicated “within a generation.” Last October, he introduced the first-

ever UN resolution dedicated to ending it, and has pledged approximately \$35 million to projects combatting child and forced marriage in developing countries such as Ghana, Bangladesh, Zambia and Burkina Faso. Yet York University Ph.D. student Karlee Sapoznik, who researched forced marriage in Canada for her doctoral thesis, says the Canadian government has historically ignored – and even denied – that people get married against their will within our borders. “There’s almost this mythology that it doesn’t happen in Canada.”

On Nov. 5, when Citizenship and Immigration Minister Chris Alexander announced [Bill] S-7, the “Zero Tolerance for Barbaric Cultural Practices Act,” he introduced a three-pronged piece of legislation to address the problem at home and abroad. Alexander cited the 2012 Sharia honour killings, in which an immigrant from Afghanistan, his second wife and his only son conspired to drown the family’s three teenage daughters, because their “Westernized behaviour” had shamed the family. Bill S-7 would ban people in polygamous and forced marriages from immigrating to Canada. The second piece will amend the Civil Marriage Act to make 16 the minimum age of marriage across the country.

It would also enshrine forced marriage in the Criminal Code. “Everyone who celebrates, aids or participates in a marriage rite or ceremony knowing that one of the persons being married is marrying against their will” would be guilty of a crime punishable by up to five years in prison. It is moving at a fast clip through Parliament; it received its third reading on

Dec. 12. (re: Bill S-7)

At York University, Sapoznik interviewed victims of forced marriages – including a Mennonite woman from Winnipeg, who says that in 1988, she was forced to get married at age 18 after her family and community found out she was pregnant – and examined legal cases dating back to the 19th century.

... .

In Toronto, the South Asian Legal Clinic of Ontario (SALCO) investigated its first case of forced marriage in 2005, after a counsellor at a Toronto high school called to report that a family of girls had gone abroad for a vacation, but one of them did not return to Canada. Deepa Mattoo, the acting executive director of the clinic, says the group tracked the girl down, found out she was about to be forced to marry, and arranged to bring her home.

In many of SALCO's cases, women who come to them for advice don't even know that what is happening to them is wrong. "People going through it know they aren't being given a choice, but they don't necessarily call it forced marriage," said Mattoo. "They may say something like their father is making them get married, but they won't say that their human rights are being violated." Toronto's Barbara Schlifer Clinic started a support program for forced-marriage victims in 2009, and the caseload has been increasing ever since. "I've had Irish clients who have experienced forced marriage; Roma clients, Saudi, South Asian, European and Christian clients. It's pretty much across the board," says

Farrah Khan, who has been counselling victims since 2006. “We see different economic backgrounds, as well. We see it happening in communities that are isolated, in communities that have a fear about losing their connections to culture, to faith.” Rape must also be brought into discussions about forced marriage, because couples are expected to consummate the marriage.

For families with LGBT children, forced marriage is a way to control their sexuality and protect the family from the shame of having a gay or transgender child. Yegi Dadui, transgender program coordinator at the Sherbourne Health Clinic in Toronto, deals with about four cases a year involving both Canadian citizens and newcomers. “There’s so much stigma around being trans already. Not being able to express yourself and be yourself is difficult, and that’s what’s going on in forced-marriage situations, as well.” Because these cases are even more taboo, it’s difficult to find people who will discuss their experiences openly. Although Antua Petrimoulx is not one of Dadui’s clients, her story has parallels with other cases in Canada.

Mattoo says SALCO’s clients are often hesitant to seek help from the police or the courts, because they don’t want to incriminate – or testify against – family. Without them, they would be alone in the world, a fate sometimes more frightening than the abuse itself. It’s also difficult to prove emotional duress and subtler types of pressure. In cases of physical and sexual abuse, SALCO has helped clients pursue criminal charges against spouses they were forced to marry,

the same way they would even if the marriages weren't forced. For Mattoo, Canada already has robust laws that deal with abuse, and she feels victims are more in need of a place to live, counselling to deal with the psychological trauma, and help getting back on their feet after they leave their marriages and, sometimes, their family members.

That's why SALCO and 13 other activist groups and social service agencies, including the Schlifer clinic and the Woman Abuse Council of Toronto, are opposed to Bill S-7. "The proposed legislation exposes the underlying racist agenda that this government harbours," their statement reads, referring to the name of the bill and the fact that they feel it singles out non-Western communities where polygamy is accepted. Mattoo's main criticism is that the new law allows the federal government to wash its hands of the problem. "I'm not saying that any criminal action should go unreported, but criminalizing will not help prevent it."

On June 16, the United Kingdom made forced marriage a criminal offence. Its forced-marriage unit, created in 2005 by the British government in response to a growing number of cases, says it "gave advice or support related to a possible forced marriage" in 1,302 cases between January and December 2013, the most recent statistics. Anyone who uses "violence, threats or any other form of coercion" to force someone to marry faces up to seven years in prison. The case of a blond-haired, blue-eyed Christian girl from Ontario is one of the first being investigated under the new law. (See case 3, Elizabeth.)

QUESTIONS TO CONSIDER: Community Response to Criminal Laws on Forced Marriage

1. The federal government's recent changes to the law that make forcing you to marry a criminal offence were met with criticism by several community organizations and individuals that work with victims of forced marriage. Among these concerns, which are described in the article, are that victims may be resistant to discuss their situation with police or courts out of fear of incriminating or having to testify against their families. Since existing criminal offences like kidnapping and assault can already be used to pursue criminal charges against spouses, another concern is that victims would be better assisted through increased support for housing, counselling, and other social services. Others, however, support the changes to the law as a way to discourage people from forcing others to marry.

What do you see as the pros and cons of the new legislative changes that now make it a criminal offence to force someone to marry? Do you support the new changes? Do you think that another approach would be more effective?

QUESTIONS TO CONSIDER: Community Response to Criminal Laws on Forced Marriage

2. The federal government's legislative changes were originally introduced as part of Bill S-7, referred to as the "Zero Tolerance For Barbaric Cultural Practices Act". This title was also criticized for racially stereotyping communities by implying that certain cultures are "barbaric," a word that is often used to mean "primitive" or "savage."

What do you think about the title of the bill? Do you agree or disagree that it could stigmatize some communities by portraying entire cultures in a negative light?

QUESTIONS TO CONSIDER:

Lee Marsh

1. How do you think Lee felt when her mother announced her upcoming marriage?
2. Why do you think Lee went through with the marriage after it was announced? What pressures was she facing and from whom?
3. Whose approval did Lee need in order to divorce from her husband?

QUESTIONS TO CONSIDER:

Lee Marsh

4. What was the congregation's reaction to her letter to the church elders?

5. Who could Lee have turned to for support? What difficulties could she have experienced in doing so?

QUESTIONS TO CONSIDER:

Antua Petrimoulx

1. How was Antua treated by her mother and siblings before she married? Why do you think they treated her this way?

2. What do you think were some of the reasons that Antua was forced to marry?

3. How was Antua treated by her family and the police when she left her marriage?

4. Why do you think Antua came to Canada?

QUESTIONS TO CONSIDER:

“Elizabeth”

1. What were the basic expectations around marriage for members of “Elizabeth’s” community?
2. What happened to “Elizabeth” when she arrived in England?
3. What happened with “Elizabeth’s” fiancé and why did they not marry?

QUESTIONS TO CONSIDER:

“Elizabeth”

4. How did members of “Elizabeth’s” community react when she complained about the conduct of her fiancé?

5. How did “Elizabeth” seek out support, and who assisted her?

6. How did “Elizabeth’s” parents treat her?

**On *It's My Choice: Who, If, When to Marry*
(South Asian Legal Clinic of Ontario, 2012)**

At this stage, students can read the graphic novel in Part III of this curriculum entitled *It's My Choice: Who, If, When to Marry*. *It's My Choice* is produced by the South Asian Legal Clinic of Ontario (SALCO), and focuses specifically on examples of forced marriage in the South Asian community. As the above case studies in Maclean's "Against their Will: Inside Canada's Forced Marriages" and numerous other documented cases illustrate, forced marriage occurs across all cultures, religions, and regions.

QUESTIONS TO CONSIDER:

Maya, 17, and Sam

1. Why did Maya have such conflicting feelings about her experience?
2. What were Maya's parents' concerns?
3. How might Maya's and her parents' concerns and beliefs be different? How might they be the same?

QUESTIONS TO CONSIDER:

Maya, 17, and Sam

4. What were Maya's options aside from going through with the marriage?

5. Could Maya legally leave the care of her parents?

6. Who might Maya be able to turn to for support?

QUESTIONS TO CONSIDER:

Karine, 18 and Sheila

1. Why was Sheila having disagreements with her parents?
2. Why did their parents take Sheila to Pakistan and what happened?
3. What happened to Karine's relationship with her parents when she turned 18?

QUESTIONS TO CONSIDER:

Karine, 18 and Sheila

4. What plans did Karine develop and who helped her carry them out?

5. What legal rights does Karine have?

6. Suppose Karine was actually 16, instead of 18, and was experiencing the same pressure from her parents' to marry. Suppose Karine's parents told her that they were soon planning to take her to another country where she would meet and marry her future husband, like they had done with her sister Sheila. What do you think Karine might be experiencing as a 16 year old?

QUESTIONS TO CONSIDER:

Ash

1. What do you think are some of the reasons that Ash's parents wanted him to get married?
2. How did Ash's parents find out that he was gay and what was their reaction?
3. How did Ash's parents pressure him into marrying?
Why do you think Ash eventually got married despite not wanting to?

QUESTIONS TO CONSIDER:

Ash

4. Why did he tell his wife that he was gay and how did she react?

5. What kind of support did Ash get after he and his wife divorced? How do you think this helped?

6. What lessons did Ash learn from his experience that he could share with Karine and other young people?

Leaving a Forced Marriage

An individual who has been forced to marry, like all other married individuals, has the option of obtaining a divorce. Divorce is covered by the federal *Divorce Act*. Under the *Divorce Act*, the only requirement to obtaining a divorce is to show that your marriage has broken down. To show that your marriage has broken down, one of the following criteria must apply:

1. You and your spouse have been living apart for a year.
2. Your spouse has treated you with physical or mental cruelty.
3. Your spouse has committed adultery.

An individual who has entered a forced marriage may be able to apply to the court to get that marriage **annulled**. When a marriage is legally annulled, it is treated as if the marriage never took place at all because under the law, it was invalid to begin with. This is somewhat different from a divorce, because a divorce ends the marriage while also serving as a record that the parties were at one time married. An annulment creates a “legal fiction”, that states there was no marriage in the first place, except for certain purposes such as the legitimacy of any children, and eligibility for some remedies such as support and division of marital property.

A court might agree to annul the marriage if the individual

can show that he or she married under duress, because then they did not freely consent to the marriage

It is important to note, however, that an annulment is much harder to obtain than a divorce. The outcome is not as certain, as annulment involves a high standard of proof to show that the marriage was “under duress.” The court will refuse to grant an annulment in many cases where the parties were subject to “mere moral persuasion”, meaning that they married to avoid upsetting their family or religious community. Generally, duress means that the person had to be so overcome that they were unable to think properly and therefore lacked the mental ability to consent, which is difficult to prove if there was no fear.

S(A) (bride) v S(A) (groom)

A.S. (“A”) was 16 years of age and was living with her mother and stepfather in Ontario. “A” was pressured into marrying “S” by her mother and stepfather. “S” had recently arrived in Canada. According to “A”, her mother and stepfather told her that “S” wanted to live in Canada, and needed to marry “A” in order to do so. They also told “A” that they would receive \$2,000 if she agreed to marry “S”, and told her that “we can have all this nice stuff that we didn’t have before with all this money”. “A” repeatedly told her parents that she did not want to get married, but they continued to apply pressure. “A” was particularly afraid of this pressure because of a history of sexual abuse by her stepfather, which earlier required Children’s Aid Society to take her into its care.

“A” ended up marrying “S” in Hamilton. Because she was only 16 years old, her mother and stepfather were required to consent to her marriage. Although they married, “A” and “S” never lived together nor did they have sexual relations. Shortly after the marriage, “S” left Canada and “A” applied to the court to annul her marriage.

“A” provided evidence to the court that she was not able to withstand the pressure coming from her mother and stepfather to marry. She admitted that the pressure was not of a physically threatening nature. Nonetheless, she did not feel she had the ability or capacity to overcome the pressure they put upon her to marry “S”.

Justice Mendes da Costa decided to grant the annulment on behalf of “A”, because she married under duress. In his decision, Justice Mendes da Costa said the following:

A valid marriage is grounded upon the consent of each party. Oppression may vitiate consent and, if there is no consent, there is no valid marriage. Different people may respond to oppression in different ways, and conduct that may overmaster the mind of one person may not have this impact upon the mind of another. It matters not, therefore, whether the will of a person of reasonable fortitude would – or would not – have been overborne; the issue is, rather, the state of mind of the applicant. To constitute duress, it must be established that the applicant’s mind was so overcome by oppression that there was an absence of free choice...

...

Oppression can take various forms; it may be generated by fear, or by persuasion or pressure. Essentially, the matter is one of degree, and this raises a question of fact for the court. The determination involves a consideration of all relevant circumstances, including the age of the applicant, the maturity of the applicant, the applicant's emotional state and vulnerability, the lapse of time between the conduct alleged as duress and the marriage ceremony, whether the marriage was consummated, whether the parties resided together as man and wife and the lapse of time between the marriage ceremony and the institution of the annulment proceeding. As long as the oppression affects the mind of the applicant in the fashion stated, physical force is not required and, no more so, is the threat of such force a necessary ingredient. Nor is the source of the conduct material.

In other cases, annulments have been refused, even where “incredible pressure” had been brought to bear by family members and by the spouse for immigration sponsorship, and the couple never lived together or consummated the marriage (see, for example, *Parihar v Bhatti*; *Khan v Mansour*).

QUESTIONS TO CONSIDER:

1. How does Justice Mendes da Costa define “duress”?
2. What were the 8 criteria or circumstances that Justice Mendes da Costa mentioned are important when considering whether an individual in the marriage has experienced oppression?
3. Do you agree with the court’s decision? Why or why not?

QUESTIONS TO CONSIDER:

4. If “A” was older than 16, do you think the court’s decision would have changed? Why or why not? What about if the marriage had been consummated, or if the husband had not left right after the marriage but had stayed?

5. In her petition to the court, “A” also asked, if an annulment were not granted, that the judge issue a divorce decree. The judge stated in his judgment that he would have granted a divorce because the parties had lived apart for more than one year. However, “A” preferred an annulment. Why do you think “A” preferred an annulment instead of a divorce? What are the benefits of one over the other?

Key Terms

- Forced Marriage
- Arranged Marriage
- Consent
- Coercion
- Divorce
- Annulment
- Duress

Youth Agency and the Culture of Law

Emancipation or Leaving Home



Emancipation or Leaving Home

As a child or teenager, living at home may sometimes be difficult. In many cases, difficulties at home may be temporary, and can be dealt with in many ways, such as: having discussions with the people you live with; setting boundaries and rules at home; or seeing a counsellor. In exceptional circumstances, living at home may be unbearable or even dangerous. This handout outlines the various ways that minors living in Ontario can leave the control of their parents or guardians, or in other words, seek “emancipation”. As you read this handout, consider what the legal framework of emancipation implies about youth and family, and why the government’s role in ensuring the wellbeing of young people shifts depending on their age.

The process of applying to a court to be freed from the control of your parents is generally referred to as “emancipation”. Although some states in the U.S.A. have an emancipation process, most of Canada does not have laws on emancipation. In fact, Quebec is the only province in Canada that allows minors to apply to the court to be emancipated from their parents, and emancipation requests are only granted in special circumstances where there are serious reasons for the request.¹

1. Examples of “serious reasons” that would warrant a request for emancipation could include circumstances where one or both parents may be difficult to locate or unreasonably withholding consent to a valid request, or where it is very important for a minor to begin working or be able to sign a lease to an apartment without the involvement of a parent.

Case Study

Tarek is 16 years old and lives in Markham with his mother and father. Until he turned 14, Tarek got along well with his parents. More recently, however, Tarek's relationship with his parents has been difficult, to the point where Tarek dreads coming home from school. Tarek's mother needs to know everything that Tarek is doing, and is constantly invading his privacy, for example by listening in on his phone conversations and reading his emails and Facebook messages. They get into huge fights on a regular basis. Tarek and his father don't fight as often, but Tarek finds him distant and difficult to talk to. Tarek doesn't tell his parents much anymore, and is starting to find it unbearable to be at home. He is thinking of moving out, and his friends think he should as well. Tarek's closest friend, Curtis, told Tarek that his uncle owns an apartment that he can rent out to Tarek. Tarek hasn't spoken to his parents about this, but given his mother's controlling nature, the chances of her allowing him to move out are close to non-existent.

Tarek hasn't decided what to do, but is interested in gaining some independence from his parents.

QUESTIONS TO CONSIDER:

1. What are Tarek's options short of moving out of home?
2. Can he "emancipate" himself from his parents?

Leaving the Care of your Parents

Although a minor cannot apply for emancipation in Ontario, minors who are 16 years or older can withdraw from parental control under s. 65 of the *Children's Law Reform Act*. What does it mean to withdraw from parental control? This means that minors over 16 can choose at any time to leave the family home and live independently, without having to obtain the permission of their parents or the court. Keep in mind that regardless of whether you leave the family home, the law in Ontario requires you to attend school until you turn 18 or graduate high school.

As attractive as leaving home might sound to Tarek in the case study above, it comes with major financial hurdles.

For instance s. 31(1) of the *Family Law Act* obligates every parent to provide support for his or her unmarried child until that child turns 18. However, if a 16 or 17 year old like Tarek voluntarily withdraws from parental control by leaving home, Tarek's parents are no longer required to provide financial support to him. In other words, Tarek is on his own financially. While a landlord in Ontario cannot refuse to rent an apartment to a minor who is 16 years of age or older under the *Ontario Human Rights Code*, how would Tarek pay his rent, food, and other basic necessities?

In many provinces, Tarek might be eligible for social assistance after leaving home. But again, that depends on his age as well as the specific circumstances of his case. In Ontario, social assistance is provided through an agency called Ontario Works, and is delivered in monthly payments that can help cover costs associated with basic needs, including shelter and food. You may be eligible for social assistance in Ontario after turning 16, but you might first need to show that your parents are unable or unwilling to support you or let you live at home, or that you have experienced physical, emotional, or sexual abuse while at home.

Furthermore, if Tarek wanted to leave home before turning 16, he would not be entitled to social assistance. His options are more limited, as discussed below in “Child Protection and Children Under 16 Years of Age”.

What Does it Mean to Voluntarily Withdraw from Parental Control?

Letourneau v Haskell

16-year-old Scott Haskell suffered a major dilemma, namely whether to reside with his mother and alcoholic stepfather, or strike out on his own despite his limited financial means. Two years earlier, Scott's parents had divorced. Scott's father was awarded custody and Scott accordingly went to live with him. Both his parents soon remarried. Scott began fighting with his father and stepmother, however, and went to spend his summer holidays with his mother. When Scott tried to return to his father's home before school started again, his father refused to take him back and made it clear that Scott was not welcome into his home under any circumstances.

Scott began living with his mother and her new husband. Scott's mother applied for custody, and was awarded it by the court. Scott's stepfather, however, had a severe drinking problem and Scott soon found it unbearable to live in that house. Scott's mother testified herself that the conditions were intolerable for Scott, and were causing him psychological damage. At 16 years of age, Scott moved out and lived with an older couple whom he paid weekly for room and board.

Despite all these problems with Scott's living conditions, he continued to attend school, entering Grade 12 with an impressive average, and worked a summer job.

At trial, the judge ordered both parents to pay support to Scott. Scott's mother appealed the decision. In determining whether Scott's mother should continue to support him financially, Justice Clements looked at the following provisions of Ontario's *Family Law Reform Act* (now ss. 31(1) and (2) of the *Family Law Act*):

(1) Every parent has an obligation, to the extent the parent is capable of doing so, to provide support, in accordance with need, for his or her child who is unmarried and is under the age of eighteen years.

(2) The obligation under subsection (1) does not extend to a child who is sixteen years of age or older and has withdrawn from parental control. R.S.O. 1990, c. F.3, s. 31 (2).

Scott's mother argued that since Scott withdrew from parental control, the second provision applied and she should not be required to financially support him. Justice Clement, however, disagreed. Considering the purpose and philosophy of the Act, he interpreted the legislation differently and decided that although Scott had indeed withdrawn from parental control, he did not do so *voluntarily*. Rather, he was compelled to do so because of the difficult conditions he faced in each of his parents' homes. Because Scott could not be seen as *voluntarily* withdrawing from parental control, his parents would still be obligated to support him financially until he turned 18.

In his decision, Justice Clement discussed the relevant provisions under the *Family Law Act*, and what it means to withdraw from parental control:

In the view of this Court the concept of the “withdrawal from parental control” at age 16 [under s. 31(2) of the *Family Law Act*] means a “voluntary” withdrawal, the free choice, indeed, of the child to cut the family bonds and strike out on a life of his own. On taking on this personal freedom the child assumes the responsibility of maintaining or supporting himself. It is his choice, freely made, to cut himself away from the family unit. Once this choice is freely made and the responsibility accepted by the child, the family unit has, in effect, been severed and the responsibility of the parents to support the child thus ceases.

If the child is driven from parental control by the emotional or physical abuse in the home brought on due to the circumstances in the home, then surely he cannot be compelled to remain there. These cases may be analogized to a term of “constructive” withdrawal from parental control. The choice of leaving was not voluntary but of necessity to ensure the physical and mental well-being of the child.

There will be cases where the parent or parents, due to the inability of the child and the parents to get along, will, in the best interests of the family unit and perhaps with the consent of the child, cause a child to set up

residence elsewhere on attaining the age of 16. This is not a withdrawal as envisaged by the Act.

QUESTIONS TO CONSIDER:

1. What is the difference between a “voluntary withdrawal” and a “constructive withdrawal”, and why does that matter for the court? How does this apply to Scott’s circumstances?
2. If Tarek decided to move out, would his circumstances qualify as voluntary or constructive withdrawal? Is Tarek’s mother’s behaviour as extreme as Scott’s parents’ behaviour?
- 3, Under what conditions should withdrawal from parental control not be considered voluntary? Alternatively, what would a voluntary withdrawal look like?

Choosing Which Parent to Live With

Suppose Tarek's parents decided to divorce. Tarek decides that moving out on his own would be too difficult, and since his mother's invasive and controlling behaviour was his main concern while at home, he thinks his next best option would be to live with his father until he graduates high school and starts working. Can Tarek choose who he lives with?

If the matter goes to court, a child's preferences will be considered as part of the court's determination of the best interests of the child (under s. 24(1) of the Children's Law Reform Act). The older the child, the more a court will take his or her preferences into account. A judge may also appoint a children's lawyer to represent the child and his or her wishes to the judge making the decision. But the judge still makes the final decision.

Child Protection and Children Under 16 Years of Age

What if you are under 16 and feel that you cannot live at home? In Ontario, laws on child protection allow for the government to intervene where parents are unable to provide a minimum standard of care for children under 16. Minors who are under 16 can seek protection from their parents under Part III of the Child and Family Services Act. In such a case, a Children's Aid Society will investigate the allegations, and take the child into their care where necessary. The Children's Aid Society is then responsible for providing temporary care for the child, for example by placing

the child in a foster home or group home, or ensuring that a foster parent can care for the child. The Children's Aid Society may also look to other relatives or friends who can care for the child.

In cases where children are unable to be returned to their parents after a certain period of time, the child may enter the permanent care of the government, and thereby be referred to as a Crown ward. Once a child becomes a Crown ward, the Children's Aid Society will try and secure an adoptive home for the child.

According to s. 37(2) of the *Child and Family Services Act*, a "child" (defined as a minor who is under 16) is in need of protection where:

- a) the child has suffered, or is at risk of, suffering physical harm inflicted by the parent or caused by that parent's failure to act
- b) the child has been, or is at risk of, being sexually molested or exploited by the parent, or by another person where the parent knows or should have known that there was a risk and failed to protect the child
- c) the parent has failed to provide or allow medical treatment that is necessary to cure, prevent or alleviate physical harm or suffering
- d) the child has suffered, or is at risk of suffering,

emotional harm resulting from actions, failure to act, or neglect by the parent

e) the child has suffered emotional harm and the parent has failed to provide or allow treatment to remedy or alleviate the harm

f) the child has been abandoned, the parent has died or is unavailable to act as a parent and has not provided otherwise for the child's care, or the child is in residential care and the parent refuses or is unable to resume the child's care

g) the child is less than twelve years old and has killed or seriously injured another person, or caused serious damage to another person's property and the parent has contributed to this in some way

h) the parent is unable to care for the child and consents to protection

As with decisions involving custody, access, and guardianship, a court will make a decision about child protection based on the *best interests* of the child.

DISCUSSION

As a whole class or in groups or pairs, discuss the above factors that the Court must consider in determining if a child is in need of protection. What does each mean to you? Consider phrases like “failure to act.” Can you think of an example where this would apply?

How does the Legal Situation for Minors Between 16 - 18 Compare with the Legal Situation for Minors Under 16 years of Age?

As illustrated by the above sections, your options with regards to leaving home can be quite different depending on whether you are over or under 16 years of age. Recall from above that if you are 16 or over, you can choose to withdraw from parental control and protection. If you are deemed under the law to have left home voluntarily (rather than being compelled to leave home, as Scott was in *Letourneau v Haskell*), you are not entitled to any financial support from your parents. You can, however, apply for social assistance to provide financial support for your basic needs, although you may be required to show that living at home or receiving financial support from your parents is difficult or impossible. If you do receive social assistance, the amount of support you receive may not be much.

If you are under 16 years of age, the law says that you do not have the capacity or agency to voluntarily withdraw from your parents' control. Rather, if you are unable to live at home because of mistreatment or the inability of your parents to provide basic care, you can turn to a teacher, police officer, religious leader or another adult you trust to report your problems. You could even phone a Children's Aid Society yourself. In this way, the relevant child protection service agency can be brought into action, investigate your situation, and possibly remove you from your parents' control.

In the event that you are removed from your parents' control, you are not independent and are not allowed to live on your own. The Children's Aid Society that is involved is then responsible for ensuring you are properly cared for.

Children's Aid Society of Peel v S(P)

D was 14 years old and 17 weeks pregnant. She ran away from home after her parents found out about the pregnancy. D was afraid of giving birth and wanted an abortion.

After D left her parents' home, her parents signed a temporary care agreement with the Children's Aid Society of Peel, and D was placed under their care. D's mother stated that she had no choice but to sign the agreement, because D refused to come home and stay with them. They agreed that D should stay with the Children's Aid Society until they could repair their relationship and she could return to the family home.

Although D's parents agreed that the Children's Aid Society should continue to care for D, they were deeply against an abortion, in part because of their religious beliefs (D's parents were both members of the Pentecostal Church). They offered, instead, to care for the child after it was born.

The Children's Aid Society applied to the court for an order for temporary custody of D, under the Child and Family Services Act, so that they could consent to the abortion on D's behalf. Although D's parents had agreed that the

Children's Aid Society would have temporary care of D, they requested that the court permit them to retain their parental right to consent to or refuse medical treatment on D's behalf so that they could prevent the abortion.²

Evidence from several professionals who assessed D was provided to the court. A social worker reported that D had nightmares about giving birth and was showing signs of depression. A medical doctor recommended an abortion for D, noting specifically her young age and resulting health risk to the infant. D had also recently received medication for a sexually transmitted disease that could pose a risk to the child. A psychologist performed an assessment on D and concluded that she was of average intelligence and that her judgment was not impaired. The psychologist also concluded that she felt no conflict and was not ambivalent about her decision to have an abortion.

D submitted an affidavit to the court stating that she wanted to stay in the care of the Children's Aid Society and have an abortion. She also stated that she wished to graduate from high school and become a nurse, and that having a child would not allow her to do this.

D's parents, on the other hand, believed that it was in the best interests of both D and her unborn child to refuse to consent to an abortion.

2. The court has the power to permit D's parents to retain this right under 62(1) of the *Child and Family Services Act*.

In making his decision, Justice Karswick had to determine whether to consider the best interests of the unborn child. Just prior to this court appearance, several recent decisions from the Supreme Court of Canada had indicated a refusal to recognize the legal status of an unborn child.³

Acting on behalf of a lower court, Justice Karswick was bound by these decisions and therefore could not consider the interests of the unborn child (who also had no legal representation at the hearing).

Justice Karswick, therefore, was left with considering how to balance the interests of D with those of her parents. He looked to the Child and Family Services Act, which clearly indicates that the best interests of the child are the most important consideration. Justice Karswick decided that, regardless of her parents' wishes, it was in the best interests of D to award temporary custody to the Children's Aid Society, and accordingly give the Society the right to consent to any medical treatment or procedure that D required.

3. See *Borowski v Canada* (1989), *Tremblay v Daigle* (1989), and *R v Sullivan* (1991).

QUESTIONS TO CONSIDER:

1. Do you agree with Justice Karswick's assessment? Why or why not?
2. To what degree do you think that D's "best interests" were upheld in this case? What about the fetus?

Conclusion

Depending on your age and the circumstances you are experiencing at home, leaving the care of your parents or guardians can result in very different situations. These situations reflect how serious or harmful the situation is at home, as well as how the law views the maturity of young people at different ages.

If you are under 16 years of age, the law does not recognize your capacity to leave home voluntarily or to live independently. In most cases, the law and the various social services you deal with (e.g. Children's Aid Societies) will view your parents or other family members as best suited to take care of you. If living at home poses a serious risk to your wellbeing, a Children's Aid Society may remove you from your parents' care. You may then be placed with another relative or in a foster home, enter the permanent care of the government, or be adopted. While you may choose to leave home once you turn 16, leaving home raises the question of whether your parents will continue to support you financially, and if not, how you will support yourself.

Regardless of your age, leaving home can be a stressful and challenging process. The law around leaving home and obtaining financial support can be complicated depending on each person's unique circumstances. The complications in the law not only make leaving home difficult, but also raise important questions about how the law views the agency and capacity of young teens. Whatever situation

may drive someone to consider leaving home, it is important to speak to a trusted adult or organization that can provide information and advice specific to the situation. There are a number of resources that provide assistance to youth experiencing difficulties at home.

Key Terms

- Emancipation
- Social Assistance
- Voluntary Withdrawal
- Constructive Withdrawal
- Child Support
- Crown Ward
- Best Interests of the Child

Youth Agency and the Culture of Law

Part III: Materials and Further Resources



Options and Resources

What can you do...

If you are facing pressure to marry or are in a forced marriage?

If you are living at home:

- You can speak to a guidance counselor, social worker or contact a community clinic such as:
 - Justice for Children and Youth (Contact: 416-920-1633 or 1-866-999-5329, Website: www.jfcy.org)
 - South Asian Legal Clinic of Ontario (Contact: 416-487-6371, Website: www.salc.on.ca)
 - Barbra Schlifer Commemorative Clinic (Contact: 416-323-9149 ext. 234, Website: www.schliferclinic.com)
- You can contact helplines, such as:
 - Kids Help Phone (Contact: 1-800-668-6868, Website: www.kidshelpphone.ca)
 - Ontario Victims Support Referral Line (Contact: 1-888-579-2888 or 416-314-2447)
- You can contact your local Children's Aid Society (in Toronto, Contact: 416-924-4646, Website: www.torontocas.ca)
- You might want to create a safety plan. Review Karine's safety plan on p. 22 of *It's My Choice: Who, If, When to Marry*.

If you are being forced to travel abroad, or think that you may be forced to marry while abroad:

- Register with Foreign Affairs Canada, either by contacting a Canadian government office abroad, or by visiting: <https://www.voyage2.gc.ca/minroca/mobile/termsandconditions-en.htm>. Registration is free and the government will only contact you in case of an emergency, or if you ask to receive messages upon arrival at your destination.
- Provide your contact information, a photocopy of your passport photo page and birth certificate, a recent photograph of your self, and details about your travel, such as flight information to a person in Canada whom you trust
- Identify the nearest Canadian government office abroad, and carry their contact information with you
- Try to have some emergency cash and a cellphone with you

Additional online resources:

- If you are in a forced marriage: <http://www.forcedmarriages.ca/get-help/i-am-in-a-forced-marriage/>
- If you need emergency assistance while abroad: <http://travel.gc.ca/assistance/emergency-assistance>
- If you need more information about leaving home:
 - o Video by Justice for Children and Youth: <https://www.youtube.com/watch?v=eZ6nTooLei4>

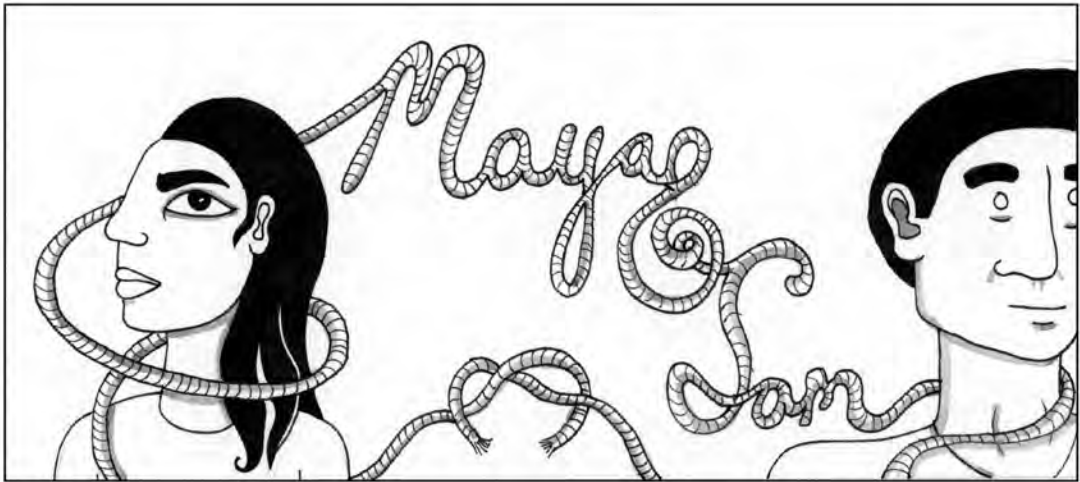
Youth Agency and the Culture of Law

Graphic Novel *It's My Choice: Who, If, When to Marry?*





*It's My Choice:
Who, If, When to Marry*



THE WORST DAY OF MY LIFE WAS THE DAY I GOT MARRIED.



I WAS RAISED TO ALWAYS OBEY
AND TO NEVER QUESTION THE
'FAMILY DECISION!'



I TRUSTED THAT MY PARENTS
ALWAYS WANTED WHAT WAS
BEST FOR ME.



I HAD BEEN TOLD FROM A YOUNG AGE BY MY COMMUNITY THAT MY PARENTS WOULD BE INVOLVED IN CHOOSING WHOM I MARRIED, BUT I EXPECTED TO HAVE SOME SAY IN THE MATTER.



WHEN I WAS 17 AND IN MY LAST YEAR OF HIGH SCHOOL, MY PARENTS INFORMED ME THAT I HAD REACHED THE RIGHT AGE FOR MARRIAGE.



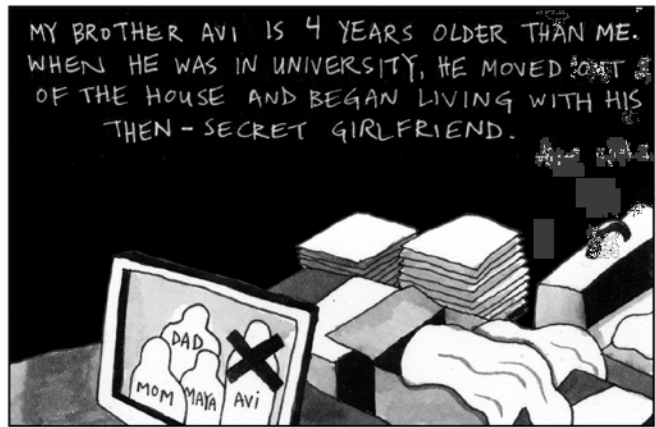
THROUGH AN AUNTIE IN OUR COMMUNITY, THEY FOUND A SUITABLE MATCH.

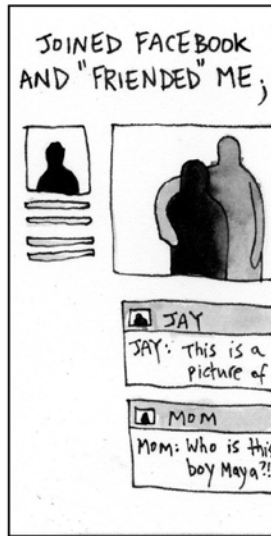


A SUITABLE MATCH MEANT THAT THEY HAD FOUND A FAMILY WITH A SON WHO WAS FROM THE SAME FAITH AND CULTURAL BACKGROUND AS OUR FAMILY.









MY BEST FRIEND IN THE WHOLE WORLD IS RITA. WE WALKED TO SCHOOL TOGETHER EVERY MORNING AND TALKED ABOUT EVERYTHING.

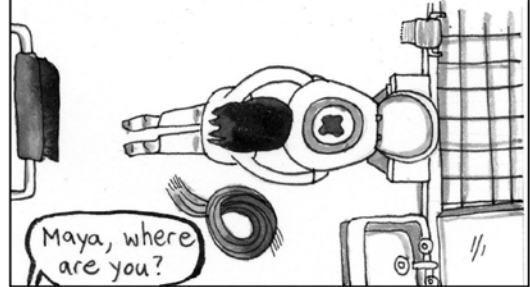




MY BROTHER AVI WAS FORCED TO COME OVER. HE SHOWED UP LATE AND LEFT EARLY.



THE WHOLE SITUATION WAS AWKWARD AND I WAS SICK TO MY STOMACH.



BEFORE SAM AND HIS FAMILY HAD ARRIVED, MY MOM HAD LECTURED ME ON HOW TO PREPARE THE TEA AND WHICH MEMBER OF WHICH FAMILY GETS SERVED FIRST.



AS I WAS PREPARING THE TEA AND SNACKS I OVERHEARD MY PARENTS IN THE LIVING ROOM SAYING:



She won't cause any problems in your family. We agree that she should marry your son. The sooner, the better.





I FELT BETRAYED AND HURT. HOW
COULD MY PARENTS DO THIS TO ME?

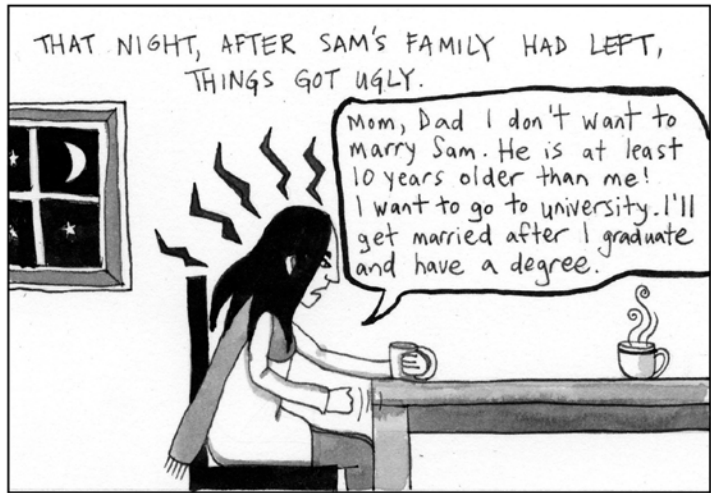
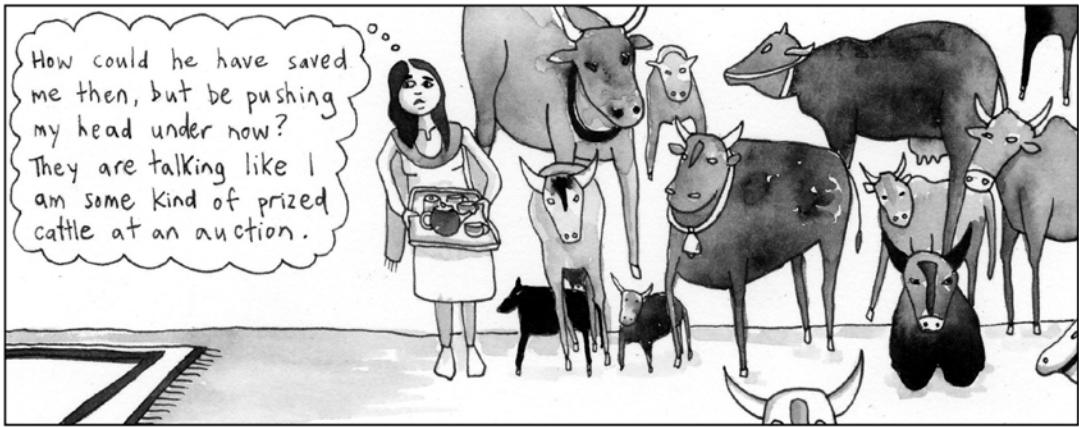


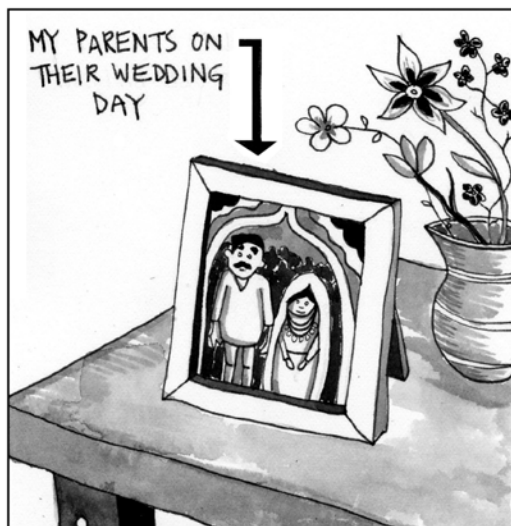
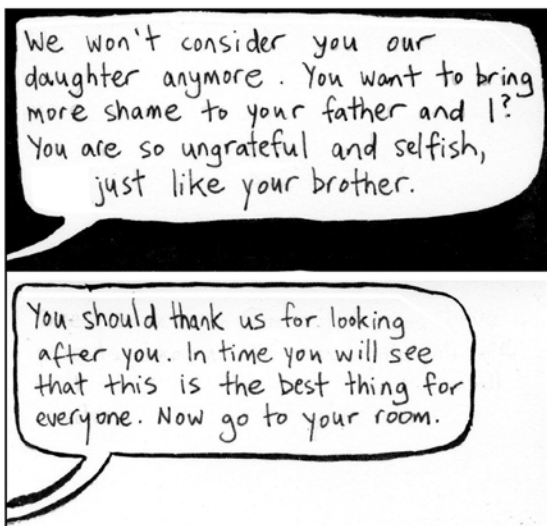
I REMEMBERED A TIME WHEN I HAD BEEN SWIMMING IN LAKE
ONTARIO AND HAD ALMOST DROWNED. THE PRESSURE OF THE WATER ON
MY CHEST MADE ME FEEL LIKE MY HEART WAS GOING TO EXPLODE.



MY DAD COULD BARELY SWIM, BUT HE JUMPED IN AND RESCUED ME. I
COUGHED UP A LITRE OF WATER THAT DAY AND HE STAYED WITH ME TO
MAKE SURE I WAS OKAY.







ON MONDAY MORNING I CALLED MY SCHOOL
PRETENDING TO BE MY MOM.

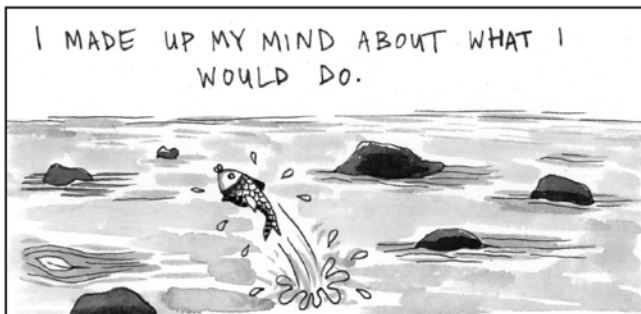


I HAD NEVER SKIPPED
SCHOOL BEFORE. I
NEEDED SOME TIME TO
CLEAR MY HEAD AND THINK.



THAT AFTERNOON I SAT BY THE RIVER AND THOUGHT ABOUT
ALL OF MY OPTIONS; I THOUGHT ABOUT MY PARENTS DISOWNING ME
AND MY COMMUNITY REJECTING ME, I THOUGHT ABOUT MY FUTURE
AND WHAT IT WOULD BE LIKE TO BE MARRIED AND HAVE KIDS. I
THOUGHT ABOUT ENDING IT ALL OR RUNNING AWAY, BUT MOSTLY I
SAT QUIETLY AND WATCHED THE WATER GO BY WHILE I GRIEVED
THE LIFE I HAD DREAMT FOR MYSELF.





JULY 2010

IN THE SUMMER OF THAT YEAR, ON A HOT SUNNY DAY, SAM AND I WERE WED IN A RELIGIOUS CEREMONY IN A BIG HALL ON THE OUTSKIRTS OF TORONTO.



I LATER FOUND OUT THAT SAM HAD A GIRLFRIEND IN CHICAGO, WHICH IS WHY HIS PARENTS WERE SO ANXIOUS FOR HIM TO MARRY SOMEONE IN "THE COMMUNITY."



HIS FATHER THREATENED TO DISOWN HIM AND DIVORCE HIS MOTHER UNLESS SAM MARRIED A GIRL THAT HE APPROVED OF. SAM WAS TERRIFIED AND AGREED TO HIS FATHER'S DEMANDS.



IN THE END IT TURNED OUT THAT SAM AND I WERE CUT FROM THE SAME CLOTH. WE WERE BOTH TERRIFIED OF LOSING OUR FAMILIES AND WANTED TO PLEASE THEM EVEN IF IT MEANT GIVING UP THE THINGS WE WANTED FOR OURSELVES.



WE WERE NUMB, ISOLATED AND AFRAID. THIS WAS THE FOUNDATION THAT WE WERE EXPECTED TO BUILD OUR LIVES UPON.



ONE YEAR LATER



THE WORST DAY OF OUR LIVES WAS THE DAY WE GOT MARRIED.



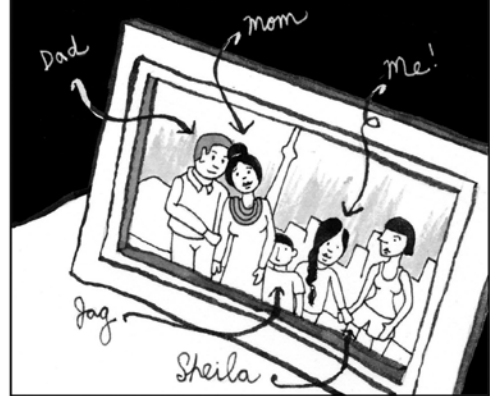
KARINE & SHEILA



MY PARENTS AND OLDER SISTER SHEILA WENT TO PAKISTAN TWO SUMMERS AGO FOR A FAMILY WEDDING. MY SISTER NEVER RETURNED TO CANADA FROM THAT TRIP.



I AM FREAKED OUT THE SAME THING MIGHT HAPPEN TO ME.



MY PARENTS ARE FROM A SMALL TOWN IN PAKISTAN. THEY CAME TO CANADA IN THE 1970s. MY MOTHER'S BROTHER ROY WAS ALREADY SETTLED IN TORONTO WITH HIS FAMILY AND ENCOURAGED THEM TO IMMIGRATE.



HE TOLD THEM IT WAS AN ETHNICALLY DIVERSE CITY WHERE THEY COULD FIND JOBS AND PRACTICE THEIR FAITH IN AN ESTABLISHED COMMUNITY.



DESPITE BEING BORN IN CANADA,
OUR PARENTS INSISTED THAT WE
WOULD BE PAKISTANI FIRST AND
CANADIAN SECOND.



SHEILA WAS ALWAYS GETTING INTO
TROUBLE AND MY PARENTS FAVORITE
THREAT WAS TO TELL HER THEY
WOULD SEND HER 'BACK HOME'!



SHEILA MADE FRIENDS EASILY AND WAS VERY INDEPENDENT SHE HAD
AN AFTER SCHOOL JOB IN A BEAUTY SALON.



I want to become a
hairstylist, full-time.

You want to cut hair, are
you an idiot?! No daughter
of mine will cut hair to
make her living!!!



AS WE GOT OLDER THE FIGHTS BE-
TWEEN MY SISTER AND MY PARENTS
ESCALATED. THEY FOUGHT ALL THE
TIME ABOUT EVERYTHING AND ANY-
THING : MAKE-UP, CLOTHES, BOYS, THE
MALL, MONEY, TV, MUSIC, CURFEW AND
AN ACCEPTABLE CAREER PATH.



SHEILA DIDN'T WANT TO GO TO UNIVERSITY AND CONSEQUENTLY OUR HOUSE BECAME A WAR ZONE.

You are disgusting, running around in those clothes and wearing that junk on your face.

You bring so much shame to our family. What will our people think, huh?! We should send you back home and marry you off to a boy from our town. That will keep you under control.



JAG AND I ALWAYS TRIED TO PROTECT HER.

Leave her alone!



Why is our family so screwed up?! I wish I had been born into a different family.



THE JULY AFTER SHE TURNED 18 MY PARENTS TOLD SHEILA THEY WOULD BE TAKING HER TO PAKISTAN TO ATTEND A COUSIN'S WEDDING. SHE INSTINCTIVELY KNEW SOMETHING WAS UP AND REFUSED TO GO.



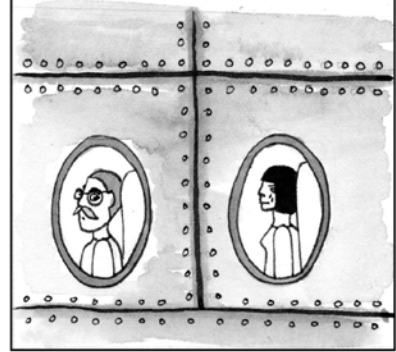
MY PARENTS ENLISTED THE HELP OF ROY UNCLE, HIS WIFE AND OUR COUSIN NINA TO HELP THEM CARRY OUT THEIR PLAN.



SHEILA WAS ADAMANT THAT SHE WOULD NOT GO. IN PROTEST SHE STOPPED EATING AND RAN AWAY FROM HOME. SHE WAS ONLY GONE ONE NIGHT BEFORE ROY UNCLE BROUGHT HER BACK.



THEY LEFT FOR PAKISTAN ONE WEEK LATER.

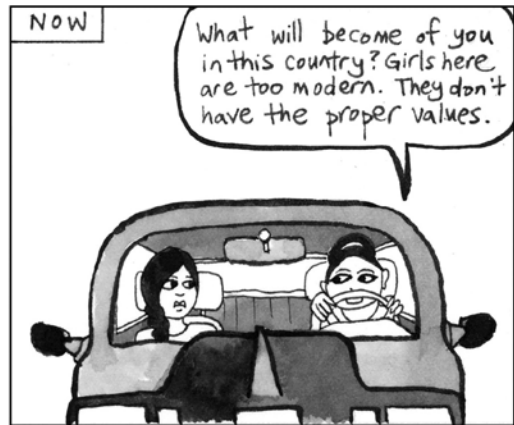


LATER, MY COUSIN NINA TOLD ME THAT SHEILA WAS CONFINED TO THE HOUSE OF A RELATIVE AND WAS FORCED TO MARRY A MAN FROM THE VILLAGE.



SHE CRIED THROUGH THE WHOLE CEREMONY.







HAVE A CALLING CARD AND/OR CARRY ENOUGH CHANGE TO MAKE AN EMERGENCY PHONE CALL;

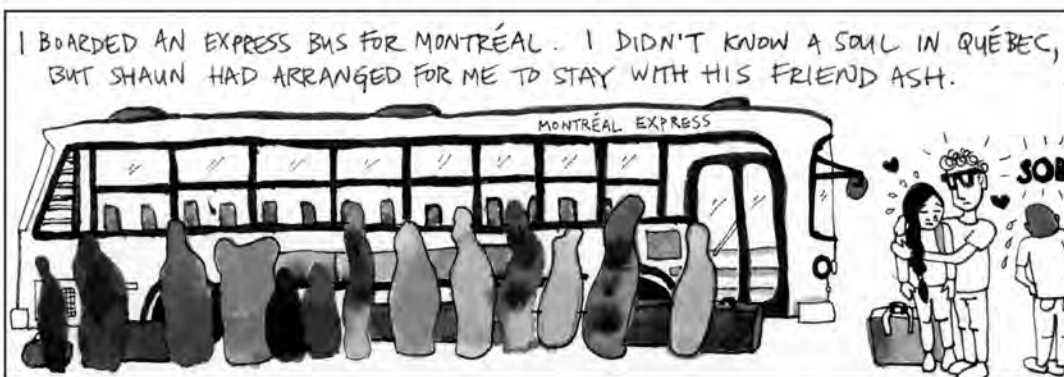
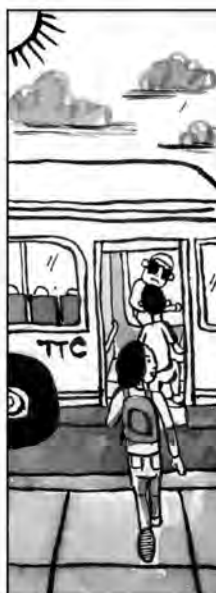


CARRY ENOUGH CASH TO CALL A CAB AT A MOMENTS NOTICE;



ARRANGE FOR ALTERNATE TRANSPORTATION AND ACCOMMODATION IN CASE OF EMERGENCY.





SHAUN TOLD ASH ABOUT MY SITUATION AND HE SAID HE WOULD HELP ME GET SETTLED IN MONTRÉAL.



I ARRIVED IN MONTRÉAL IN THE EVENING. IT WAS A HOT SUMMER NIGHT AND THERE WERE SO MANY CHARACTERS HANGING AROUND THE BUS STATION.



THE ENTIRE BUS RIDE I FELT SICK TO MY STOMACH. I WAS OVERCOME WITH PARANOIA AND I KEPT LOOKING OVER MY SHOULDER TO SEE IF I RECOGNIZED ANYONE MY PARENTS MIGHT KNOW.



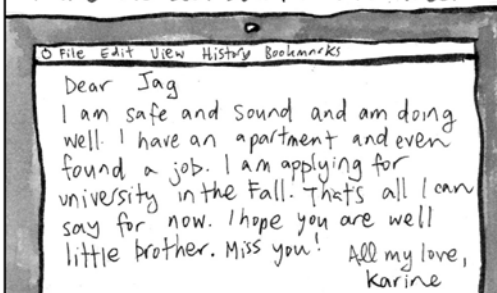
ALL OF IT SCARED ME AND I WAS SICK WITH WORRY AND FEAR - I HAD NEVER BEEN SO FAR FROM HOME ON MY OWN BEFORE. A YOUNG MAN APPROACHED ME...

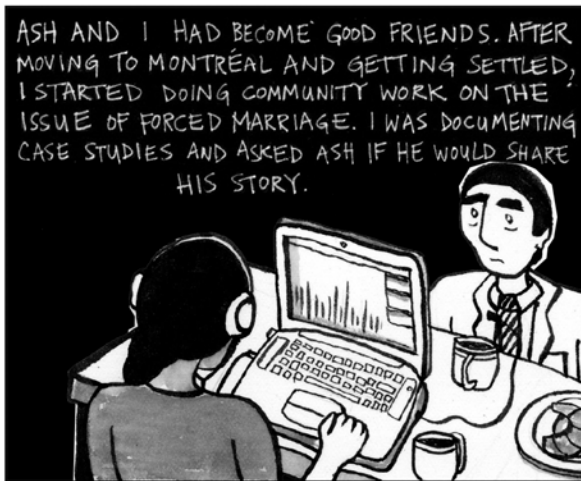
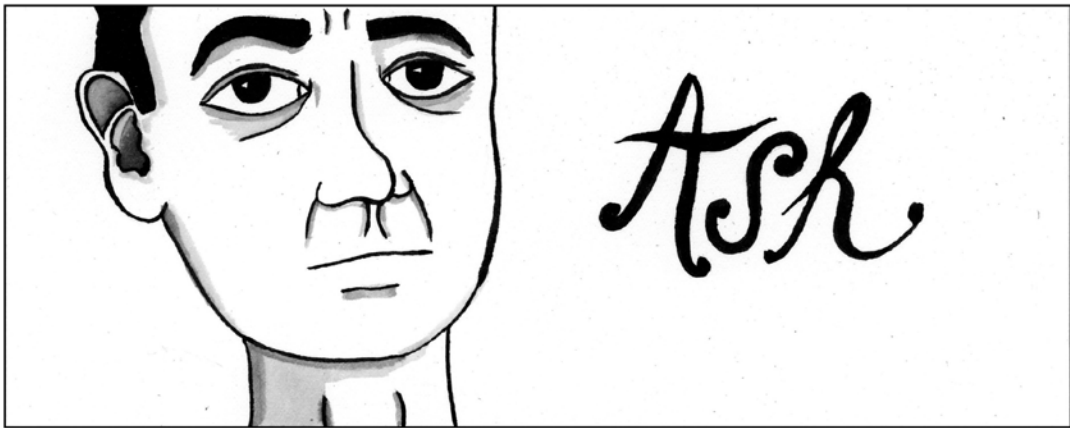


HE TOOK MY SUITCASE AND WE WALKED TO HIS APARTMENT IN THE OUTREMOINT.



THAT WAS THE FIRST DAY OF THE REST OF MY LIFE. THE HELP THAT I GOT FROM FRIENDS, THE LEGAL CLINIC, COUNSELLORS AND SOCIAL WORKERS SUPPORTED ME TO MAKE THE BEST DECISION FOR MYSELF.





ONCE I GOT USED TO IT, I LIKED LIVING IN ENGLAND. I WAS A SENSITIVE BOY AND MY AUNT AND UNCLE WERE BOTH VERY LOVING AND SUPPORTIVE. THEY HAD NO CHILDREN OF THEIR OWN.



I AM AN ONLY CHILD AND MY PARENTS WEREN'T WEALTHY. IT WAS A BIG DEAL TO THEM THAT I GET AN EDUCATION. I WAS THE FIRST ONE IN MY FAMILY TO ATTEND A UNIVERSITY.



AFTER I WAS DONE SCHOOL I DIDN'T WANT TO STAY IN ENGLAND OR GO BACK HOME SO I LOOKED FOR JOBS IN NORTH AMERICA. ALTHOUGH I LOVED THEM VERY MUCH, I NEEDED TO HAVE SOME PHYSICAL DISTANCE FROM MY FAMILY. LUCKILY I GOT A JOB OFFER IN MONTREAL.



Why did you need distance from them?

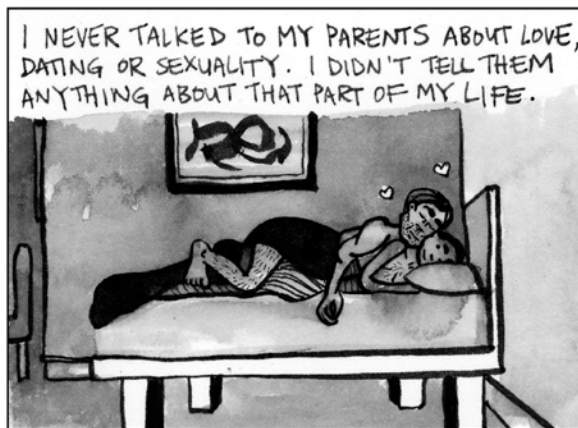
As a teenager, I started to accept the fact that I was attracted to men and I wanted to explore those feelings on my own terms.



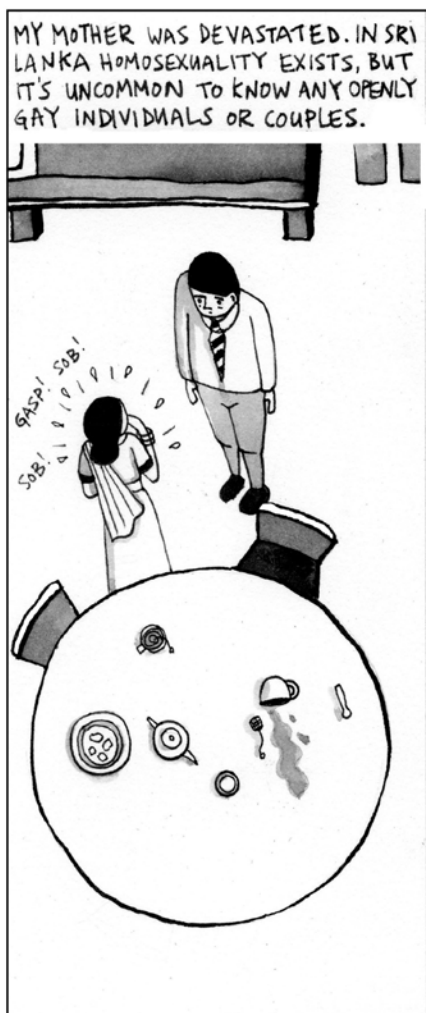
WHEN I WAS STILL IN ENGLAND I TOLD MY AUNT THAT I THOUGHT I MIGHT BE GAY AND TO MY SURPRISE SHE WAS UNDERSTANDING. SHE ENCOURAGED ME TO MOVE TO NORTH AMERICA.













AS SOON AS I ARRIVED IN SRI LANKA MY FAMILY STARTED TO PRESSURE ME ABOUT MARRIAGE.



MY AUNT CAME FROM ENGLAND AND TRIED TO HELP ME GET OUT OF IT. AFTER ALL SHE KNEW THE TRUTH ABOUT WHO I WAS.

The boy will marry when he is ready. Don't force him to do this.

We have found a nice, educated girl for Ash to marry.



You will and you must. Everything is arranged. You must get married to her now, it is your mother's last dying wish.



Ash, this is her, isn't she beautiful? She's also very bright.



Papa, I don't know... I don't know if I can marry this girl.



MY MOTHER MADE ME PROMISE TO MARRY THE GIRL THAT THEY HAD CHOSEN.

I have been suffering so much because of your choices. By marrying this girl you will allow me to be remembered within our community without shame.



"Having a wife, family and responsibilities will fix you. You have too many freedoms in Canada - you don't know who you are anymore. I can die in peace if you marry this girl."



I WAS RIDDEN WITH GUILT AND SHAME. I COULDN'T SAY NO TO HER. THE WEDDING TOOK PLACE AND A FEW DAYS LATER, MY MOTHER PASSED AWAY IN OUR FAMILY HOME.



I WAS DEVASTATED BY THE MANY LOSSES I EXPERIENCED ON THIS TRIP HOME.



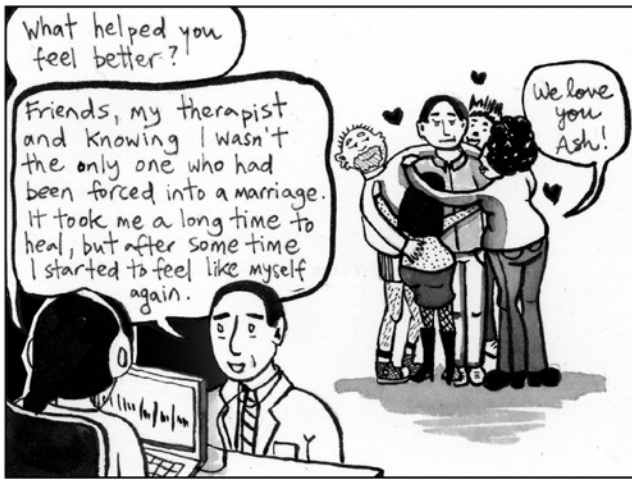
WHEN MY NEW BRIDE AND I RETURNED TO CANADA I TRIED REALLY HARD TO MAKE IT WORK. I WANTED TO BE THE SON THAT MY MOTHER WANTED ME TO BE.



HOWEVER, AFTER A YEAR I COULDN'T HANDLE THE DECEPTION ANYMORE. I FELT LONELY, DEPRESSED AND UNHAPPY ALL THE TIME.







REACH OUT FOR SUPPORT, DON'T DO THIS ALONE. OTHERS HAVE GONE THROUGH THE SAME THING. IF YOU ARE BEING FORCED INTO A MARRIAGE THERE ARE LOTS OF PLACES THAT CAN PROVIDE YOU WITH SUPPORT LIKE ONLINE RESOURCES, COUNSELORS, AND LEGAL CLINICS THAT SPECIALIZE IN FORCED MARRIAGE ISSUES.



MAYA & SAM

Writing: Somya Singh & Maryum Anis

Illustration: Somya Singh

Editing: Maryum Anis, Shalini Konanur & Deepa Mattoo

KARINE & SHEILA

Writing: Somya Singh & Maryum Anis

Illustration: Somya Singh

Editing: Maryum Anis, Shalini Konanur & Deepa Mattoo

ASH

Writing: Somya Singh, Maryum Anis & Farrah Khan

Illustration: Somya Singh

Editing: Maryum Anis, Shalini Konanur,
Deepa Mattoo & Farrah Khan

