# *Youth Agency and the Culture of Law*

## Minimum Age of Marriage

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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 Canada[1]. 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.
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> 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