



Forced Marriage: Legal Toolkit



Disclaimer

This toolkit has been designed for service providers who work with clients who have experienced forced marriage and related gender based violence. The purpose of this toolkit is to provide broad and general information on Canadian and International laws that pertain to forced marriage in Canada.

It is not meant to be legal advice but rather a guide to promote an understanding of the law as it applies to forced marriages in Canada or to Canadians abroad. Forced marriage is a complex and multi-layered form of abuse. Every case is unique and the laws outlined below may vary depending on the situation. We strongly recommend using information in this tool kit with our earlier publication on service provider tool kit on Forced Marriages for better understanding of complexities and context of issue of Forced Marriages in Canada.

This document is for information purposes only. If you need legal advice on a forced marriage issue we strongly advise you to speak directly with a lawyer / legal representative.

The South Asian Legal Clinic of Ontario (SALCO) is a not-for-profit legal aid clinic that was first established in 1999. SALCO's mandate is to provide access to justice for low-income South Asians in the Greater Toronto area. As a specialty clinic funded by Legal Aid Ontario, SALCO provides advice, brief services and/or legal representation in various areas of poverty law.

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Introduction

A marriage is something that must be entered into with the full and free will of the people getting married. Both individuals should feel that the marriage is something that they have chosen for themselves: with full and free choice.

Forced marriage is a practice in which a marriage takes place without the free consent of the individuals getting married, where pressure or abuse is used to 'force' one or both people to marry against their will. A forced marriage can happen to anyone; of any gender, of any age.

Forced marriage is a type of violence. This violence may take emotional, mental or physical forms where an individual may be 'forced' by: using threats, beating them, isolating them, using restrictions on them, inducing guilt, and, many such forms of coercion. In some cases, individuals may be taken abroad to be forced to marry. A marriage that is forced is a form of violence and an abuse of human rights. It is against the law in Canada to force someone to get married.

As per Canadian laws both parties must freely consent. Forcing somebody to get married is a criminal offense under s. 293.1 of the Criminal Code. In addition, s. 2.1 of the Civil Marriage Act stipulates, "Marriage requires the free and enlightened consent of two persons to be the spouse of each other." Concept of Consent assumes that the person making decision has a power to act and a reflective, determined, and unencumbered exertion of this power in making decision of marriage. Additionally, it is an act that should be unaffected by fraud, duress, or mistake when these factors are not the reason for the consent.

Forced marriages are often a hidden form of violence. Due to a common misconceptions and lack of awareness forced marriage issues can be overlooked.

Increasingly, community service agencies and healthcare providers are beginning to address forced marriages.

There are a number of ways to get involved and stop forced marriages.

1) Understand the Issue: This legal toolkit, along with other SALCO's forced marriage toolkit and community partner materials are for community education, to develop a stronger understanding of the forced marriages issue.

2) Make connections: A Network of Agencies Against Forced Marriages exists, which includes a range of committed community partners, who are equipped to further address the forced marriages issues.

3) Understand the misconceptions: There are many myths that exist about forced marriages. Learn about the misconceptions in order to become an informed community member.

For more information: <http://salc.on.ca/forced-marriage>

Canadian Federal Laws

Federal laws are laws that apply to all provinces and territories in Canada. When it comes to forced marriage issues, there are many areas of law that may be relevant, depending on the situation. Areas of federal law to consider in a forced marriage situation would be:

1) Canadian Charter of Rights and Freedoms:

Section 7: Life, liberty and security of person

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.¹

Section 15(1): Equality before and under law and equal protection and benefit of law

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.²

Section 28: Rights guaranteed equally to both sexes

Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons³

The Charter is considered the most important law in Canada, therefore, these rights and freedoms are applicable to victims of forced marriage and should be exercised when advocating for clients. Protection to the victims/survivors of Forced Marriage can be extended in a Human Rights Framework between the state (federal, provincial and territorial governments) and individuals.⁴ The federal laws as outlined above provide an overarching individual human rights that can be asserted by victims of forced marriage. This can also apply where Canadian law or policy have had a negative impact or worsened the victims situation.

2) Family Law:

Valid Marriage: A marriage is only considered legally valid if both parties to the marriage provided free and informed consent at the time of marriage. It cannot be under duress (forced), coercion or threat.⁵

Annulment: The person who did not consent to the marriage must make a declaration that the marriage was based on fraudulent circumstances or duress if they want to declare it null and void. The guilty party or any heirs to the party cannot make the declaration. Annulments can be

¹ CONSTITUTION ACT, 1982 (<http://laws-lois.justice.gc.ca/eng/const/page-15.html>)

² CONSTITUTION ACT, 1982 (<http://laws-lois.justice.gc.ca/eng/const/page-15.html>)

³ CONSTITUTION ACT, 1982 (<http://laws-lois.justice.gc.ca/eng/const/page-15.html>)

⁴ Mattoo, Deepa. "Forced Marriages in Canada". Online Webinar. March 31 2015.

⁵ Mattoo, Deepa. "Forced Marriages in Canada". Online Webinar. March 31 2015.

hard to obtain and many forced marriage victims may choose divorce as the easier option to end a forced marriage.⁶

NOTE: No-contact orders against the perpetrators of violence may be available through provincial child protection legislation as well as under the Family Law act. This means that if a client is leaving an abusive situation and/or forced marriage, they can apply for a no-contact order for themselves and their children through this provincial legislation.⁷

3) Immigration Law:

Immigration law in Canada is constantly evolving. Currently the law that apply in a forced marriage situations come from the Immigration and Refugee Protection Act (“IRPA”) and Regulations, which states:

Sponsorship:

Applicants must prove that their marriage is valid, both in Canada or where the marriage took place.⁸

If a victim of forced marriage sponsors their spouse, they are financially responsible for them for up to three years from the day they become a permanent resident. They can end the relationship at any time without risk to their immigration status, but there may be issues if the spouse or partner ends up on social assistance (i.e. Ontario Works or Ontario Disability) because of the relationship ending.⁹

Permanent Resident (PR):

If you are a permanent resident in a forced marriage, and you have your PR card or applied **before October 25, 2012**, your sponsor cannot withdraw the sponsorship. Your status will not be compromised if you leave an abusive situation or forced marriage.¹⁰

Conditional Permanent Residence (CPR):

If you have been sponsored into a marriage **after 2012**, or applied after October 25, 2012 the Conditional Permanent Residence category has changed to implement a new regulation. The regulation states that you must cohabit in a conjugal relationship with the spouse that sponsored you for two years **AFTER** you receive your permanent resident status. If you do not, you can lose your PR status and be removed from Canada.¹¹

EXCEPTION: If you are a victim of forced marriage, you can now apply for an exception to the conditional permanent resident status, you must show proof that abuse occurs and that it is a forced marriage beyond your consent. You can request an exception from condition at any time

⁶ *Kawaluk v. Kawaluk*, [1927] 3 D.L.R. 493 (Sask. K. B.), cited in *S.(A.) v. S.(A.)*, [1988] O.J. No. 1407 (QL) at para. 28 (S.(A.)).

⁷ *Ibid* - Conference report: forced marriage conference (October 2012) and Training Materials (October 2012) Also see “Provincial Laws” in this toolkit.

⁸ IRPA Regulation, s. 2

⁹ http://owjn.org/owjn_2009/component/content/article/57-immigration-law/335-sponsorship-breakdown

¹⁰ Guide 5289: Citizenship and Immigration Canada.

¹¹ http://owjn.org/owjn_2009/component/content/article/57-immigration-law/335-sponsorship-breakdown

during the two-year conditional period. For more information you can call the Citizenship and Immigration Canada (CIC) Call Centre at 1-888-242-2100.¹²

Temporary Resident Permit (TRP):

A TRP is when someone is granted a visa to enter Canada and/or stay in Canada under a short-term visa. You must prove to the Canada Border Services Agency (CBSA) officer that your need to be in Canada is greater and outweighs the safety or health risks to Canadian society.¹³ This option may be available in two specific circumstances: 1) If the victim claims that they were trafficked into a forced marriage, there is a possibility of advocating that the victim be granted a TRP. 2) The victim can prove that they have substantial connection to Canada, they can apply for a TRP. This is an option that would require advocacy from the service provider and proof of the circumstances that show the need for the TRP.¹⁴

Sponsorship ban for five years:

As part of the government's new regulatory changes to the *IRPA*, after June 10 2015, if a victim of forced marriage is sponsored to come to Canada by a spouse and subsequently divorces that spouse, that victim of forced marriage is still banned from sponsoring a new spouse for five years from the date they landed.¹⁵

Repatriation of Survivors:

If someone is being taken out of Canada to potentially be forced into a marriage, there are ways that you can ensure that there are safety nets set up to get them back into Canada. You can:

- Contact Global Affairs Canada
Consular Services in Ottawa and local consulate /High Commission abroad.
- <http://www.international.gc.ca/international/index.aspx?lang=eng>
- Network of over 260 Canadian embassies, high commissions, consulates and honorary consulates in 180 countries.
<http://travel.gc.ca/assistance/embassies-consulates>
- Consular officers, based both in Canada and abroad, assist thousands of Canadians each year, in crisis situations ranging from stolen passports to parental child abductions.
- Consular assistance 24 hours a day, seven days a week, through the Emergency Watch and Response Centre. sos@international.gc.ca
- Travel.gc.ca website - Government of Canada's official one-stop-shop for comprehensive international travel information. New Travel Smart mobile app also available.
- Sign up with the "Registration of Canadians Abroad Service"
<http://travel.gc.ca/travelling/registration>
- Contact the nearest Canadian government office abroad or contact the Emergency Operations at 1-800-387-3124 (toll-free from the U.S. and Canada only), 1-800-267-6788 (in North America) or call collect at 613-996-8885 (where available)¹⁶

¹² <http://www.cic.gc.ca/english/department/media/backgrounders/2012/2012-10-26b.asp>

¹³ *Temporary Residence Permit Guide*. CIC. <http://www.cic.gc.ca/english/information/inadmissibility/permits.asp>

¹⁴ Mattoo, Deepa. "Forced Marriages in Canada". Online Webinar. March 31 2015.

¹⁵ *Operational Bulletin*. CIC. March 2 2012. <http://www.cic.gc.ca/english/resources/manuals/bulletins/2012/ob386.asp>

¹⁶ Mattoo, Deepa. "Forced Marriages in Canada". Online Webinar. March 31 2015.

4) Criminal Law:

There is a number of existing *Criminal Code* provisions that can be used in cases of forced marriage. This variety of offenses can all be ways that forced marriage manifest and can happen individually or together.

- Uttering threats (s. 264.1);
- Assault (causing bodily harm, with a weapon and aggravated assault) (ss. 265-268);
- Sexual assault (causing bodily harm, with a weapon and aggravated sexual assault) (ss. 271-273);
- Kidnapping (s. 279);
- Forcible confinement (s. 279(2));
- Abduction of a young person (ss. 280-283);
- Procuring feigned marriage (s. 292);
- Removal of child from Canada (with intent to commit act outside Canada that would be one of listed offences if committed in Canada) (s. 273.3);
- Extortion (s. 346);
- Intimidation (s. 423);
- Sexual offences against children and youth (ss. 151, 152, 153, 155 and 170-172);
- Failure to provide necessities of life and abandoning child (ss. 215 and 218);
- Abduction of a young person (ss.280-283)
- Breach of a court order, recognizance (peace bond), and probation order (ss.145(3), 127, 811, and 733.1);
- Spousal abuse, abuse of a child and abuse of a position of trust/authority are aggravating factors in sentencing (s. 718.2).

If your client is interested in pursuing criminal action against their perpetrator and the police have not yet been involved, your client would have to call the police to lay charges, (a report could be made in person at a local police station) which would lead to an investigation, which could result in charges being laid. If your client is considering laying charges, please seek legal advice as there may be potential consequences that they should be aware of before they proceed.

It is important to note that once the police are contacted it is within their power to investigate regardless of what a forced marriage victim wants. If a perpetrator is charged with a criminal offence only the Crown Attorney can decide if the charge will be withdrawn. The victim will not have the power to withdraw charges. Ensure that you have connected your client to a lawyer or legal clinic and are aware of the potential positive and negative consequences that could ensue if they speak to the police.

Criminal case law around Forced Marriage:

R. v. Bandesha, 2013 ABCA 255 (CanLII):

The Crown appeals from a conditional discharge given for assault causing bodily harm. The respondent was one member of a four-person group who attacked, pushed, kicked and beat a family member, also pulling out a large clump of her hair by the roots. She was kicked in the stomach when lying on the floor. She was an adult. The group did this to coerce her to marry someone whom she did not want to marry, and not to marry someone whom she did wish to marry. The attack occurred in the victim's own home, where the ringleader also lived, and where the respondent was visiting. She left her home and stayed in a women's shelter for about three weeks. In this case, there was a conditional discharge given, there was no conviction and the Crown is currently appealing the conviction.¹⁷

Changes to Civil and Criminal Law

Zero Tolerance for Barbaric Cultural Practices Act

Bill S-7 is a bill that was put forward in late 2014 that has recently become law in Canada. There are substantial changes that this bill would make to the Immigration and Refugee Protection Act, the Civil marriage Act and the Criminal Code of Canada.

Part 2: Changes to Civil Marriage Act: legal requirements for a free and enlightened consent to marriage and for any previous marriage to be dissolved or declared null before a new marriage is contracted. There would also be a requirement of a minimum age of 16 years for marriage.¹⁸

Part 3: Changes to the Criminal Code: it would be an offence for an officiant of a marriage to knowingly solemnize a forced marriage, as it would become an offence to celebrate, aid or participate in a marriage ceremony knowing that one of the persons being married is doing so against their will or is under the age of 16 years. If that marriage was performed outside of Canada where a child (under the age of 16); was removed to take part in the marriage; that would also be an offence.¹⁹

¹⁷ Mattoo, Deepa: *Presentation: Legal Systems to know in Forced Marriage cases and beyond. 2014.*

¹⁸ <https://openparliament.ca/bills/41-2/S-7/>

¹⁹ <https://openparliament.ca/bills/41-2/S-7/>

Provincial Legal Framework

Information in this section is provided in the chart below, province by province. This chart outlines provincial legislation that could be relevant in a forced marriage case in relation to domestic violence and other manifestations of forced marriage.

Province/Territory	Age of Majority	Relevant Legislation
<p style="text-align: center;">Alberta</p>	<p style="text-align: center;">18²⁰</p>	<ul style="list-style-type: none"> • Under 16: Cannot get married. Exception: Female under 16 can get married if she is pregnant or mother of a living child, still needs consent or can apply to the Queen’s bench to forgo parental consent. (<i>Marriage Act, RSA 1980 cM-6, s. 17</i>) • Under 18: If either party is under 18, consent must be obtained by the guardian of the minor(s), except if the guardian is mentally incompetent, consent of that guardian is not required. (<i>Marriage Act, RSA 1980 cM-6, s. 19 (2)(b)</i>) • Consent is not required and the marriage is not void if there has been “carnal intercourse” between the parties before the ceremony, the marriage was consummated, the couple lived and cohabited as spouses after the ceremony or if the person has already turned 19. (<i>Marriage Act, RSA 1980 cM-6, s. 22 (1) (a) (b) (c); s. 22 (2) (c)</i>). • You can apply for a Queen’s Bench Protection Order under this act if you are experiencing “family violence” which can also happen in forced marriage situations. Perpetrators who do not adhere to these protection orders or fail to comply with them could be subject to fines and imprisonment. (<i>Protection Against Family Violence Act, 2000, c. P-27, s. 2</i>) • Child Abduction: Alberta has signed onto the CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION for any child that is “abducted” from Alberta until they turn the age of 16. (<i>INTERNATIONAL CHILD ABDUCTION ACT Chapter I-4 1986 cl-6.5 s3</i>)

²⁰ Age of Majority Act RSA 1980 cA-4 s1

Province/Territory	Age of Majority	Relevant Legislation
British Columbia	19 ²¹	<ul style="list-style-type: none"> • Under 19: Marriage with parental OR Public Guardian and Trustee OR the Supreme court's consent (MARRIAGE ACT [RSBC 1996] CHAPTER 282, s. 28 (1) (2)) • Under 16: Application to the Supreme Court shows the marriage to be expedient and in the interests of the parties or with the parents permission. (MARRIAGE ACT [RSBC 1996] CHAPTER 282, s. 29 (1) (2))
Manitoba	18 ²²	<ul style="list-style-type: none"> • Over 16/under 18: Marriage is allowed if party is widowed/divorced or consent is given by parents/guardian or judge of Family Court (<i>Marriage Act C.C.S.M. c. M50. s. 18(1)</i>) • Protection or Prevention Orders can be made by a Justice of the Peace when there has been forced confinement, sexual abuse, psychological/emotional abuse or an intentional/reckless or threatened act/omission that caused (or caused a reasonable fear of) bodily harm or property damage to the victim. (<i>The Domestic Violence and Stalking Act, C.C.S.M. c. D93</i>) • Protection Orders and torts can be made against those who force a child (under 18) to engage in sexual conduct under duress/force/coercion and/or engages in human trafficking. Human trafficking involves abducting, recruiting, transporting, harbouring, controlling, directing or influence someone's movement and uses force/intimidation/deception/fraud/abuse to go into prostitution, forced labour or have their organs or tissues removed. (<i>The Child Sexual Exploitation and Human Trafficking Act C.C.S.M. c. C94, 1(2) (3).</i>)
New Brunswick	18	<ul style="list-style-type: none"> • Under 18: Parties who have never been previously married can marry with parental consent.

²¹ Age of Majority Act. [RSBC 1996] CHAPTER 7, s. 1

²² The Age of Majority Act, C.C.S.M. c. A7

Province/Territory	Age of Majority	Relevant Legislation
Newfoundland/Lab	19 ²³	<ul style="list-style-type: none"> • Under 19: Marriage if parents, guardian, director of Child, Youth and Family Services consent. A minor has capacity to enter into a domestic contract, subject to the approval of the court. (Marriage Act, SNL 2009, c M-1.02, s. 65 (2)) • An emergency protection order can be made through this act. (Family Violence Protection Act, SNL 2005, c F-3.1, s. 4)
North-West Terr.	19 ²⁴	<ul style="list-style-type: none"> • Under 15: If female is pregnant and has a doctor's note, they can get married or with written permission from the Minister. (Marriage Act R.S.N.W.T. 1988,c.M-4, s. 21 (1) (a) (b)) • Under 19: Minors have the capacity to enter into a domestic contract, subject to the approval of a court. No marriage unless written permission from the Minister. (Marriage Act R.S.N.W.T. 1988,c.M-4, s. 43 (1)) • Survivors can apply for an Emergency protection order or order under Criminal Code under this Act. (Protection Against Family Violence Act, S.N.W.T. 2003,c.24, s. 2)
Nova Scotia	19	<ul style="list-style-type: none"> • Over 19 years of age may apply for a marriage licence in Nova Scotia. If you are under 19 years of age you must first obtain the consent of both parents. If you are under the age of 16 years you must have the consent of both parents and also get the consent of the Court (Solemnization of Marriage Act, RSNS 1989, c 436) • An emergency protection order can be made by the victim against their perpetrator through Domestic Violence Intervention Act.

²³ Age of Majority Act, SNL 1995, c A-4.2

²⁴ AGE OF MAJORITY ACT R.S.N.W.T. 1988,c.A-2

Province/Territory	Age of Majority	Relevant Legislation
Nunavut	19 ²⁵	<ul style="list-style-type: none"> • Under 15: Not allowed unless the female is pregnant and has a doctor's note, they can get married or with written permission from the Minister of Justice. (CONSOLIDATION OF MARRIAGE ACT R.S.N.W.T. 1988,c.M-4, s. 21 (2.1) (a)) • Under 19: Minors have the capacity to enter into a domestic contract, subject to the approval of a court. (Consolidation of Marriage Act R.S.N.W.T. 1988,c. M-4, s. 43) • Validity of Marriage: Action can be taken by a party who was a minor at the time of the ceremony to a judge to declare the marriage as not valid if: there was no consent at the time of marriage, the marriage was not consummated or the parties did not cohabit as spouses. (Consolidation of Marriage Act R.S.N.W.T. 1988,c. M-4, s. 48 (1) (a) (b) (c)) EXCEPTION: If the judge has received evidence/proof that sexual intercourse had taken place between the parties before they got married. (Consolidation of Marriage Act R.S.N.W.T. 1988,c. M-4, s. 48 (2))
Ontario	18 ²⁶	<ul style="list-style-type: none"> • Under 16: cannot marry • Over 16/under 18: Marriage with parental consent, court order or permission from Minister of Consumer & Business Services (Marriage Act, R.S.O 1990, c. M.3, s. 5 (2).) Consent (according to section above) is NOT required if the minor was previously married but divorced or the spouse died. (Marriage Act, R.S.O. 1990, c. M.3, s. 5 (3); 2005, c. 5, s. 39 (1).)If they have withdrawn from parental control, they have equal right to housing without discrimination. (Human Rights Code, R.S.O. 1990, c. H.19) • Over 18: free to marry

²⁵ CONSOLIDATION OF AGE OF MAJORITY ACT R.S.N.W.T. 1988,c.A-2

²⁶ Age of Majority and Accountability Act, R.S.O. 1990, c. A.7

Province/Territory	Age of Majority	Relevant Legislation
P.E.I.	18 ²⁷	<ul style="list-style-type: none"> • Under 16: Marriage if the female is pregnant or the mother of a living child as proven by a medical practitioner. (Marriage Act, RSPEI 1988, c M-3, s. 17 (2)) • Over 16/Under 18: Can get married with parental or court consent (Marriage Act, RSPEI 1988, c M-3, s. 18 (1) (a)) • An emergency protection order can be made by the victim against their perpetrator through the Victims of Family Violence Act, RSPEI 1988, c V-3.2
Quebec	18	<ul style="list-style-type: none"> • Under 18/16 or over: Can get married, but minors who are not emancipated need parental consent to marry (Civil Code of Québec, CQLR c C-1991)
Saskatchewan	18 ²⁸	<ul style="list-style-type: none"> • Under 16: A provincial court judge could decide that the age of the person should not prohibit the marriage. (The Marriage Act, 1995, c.M-4.1, s.19.) • Over 16/Under 18: Marriage with parental consent and if not, they may apply to a judge of the Court of the Queen’s Bench or of the Provincial Court of Saskatchewan. (The Marriage Act, 1995, c.M-4.1, s. 25.) • Annulment of marriage: Where someone was a minor at the time of the ceremony, the court may consider it not valid if consent was not present at the time of the marriage, the marriage was not consummated, the parties did not live together after the ceremony as husband and wife or if there was sexual intercourse that happened before the ceremony. (The Marriage Act, 1995, c.M-4.1, s.32) • Similar to the Protection against family violence act in Alberta, which survivors can be granted an emergency intervention order. (Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act, Chapter E-8.2 of the Statutes of Saskatchewan, 2002) and (Victims of Domestic Violence Act, 1994, c.V-6.02, s.2; 2010, c.15, s.8)

²⁷ Age of Majority Act, RSPEI 1988, c A-8

²⁸ Age of Majority Act, 1972, c.1, s.2; R.S.S. 1978, c.A-6, s.2.

Province/Territory	Age of Majority	Relevant Legislation
Yukon	19 ²⁹	<ul style="list-style-type: none"> • Under 19: Marriage with parental consent OR court order (Marriage Act, SY 2012, c.17, s. 40) • Annulment of marriage: Where someone was a minor at the time of the ceremony, the court may consider it not valid if consent was not present at the time of the marriage, the marriage was not consummated, the parties did not live together after the ceremony as husband and wife or if there was sexual intercourse that happened before the ceremony. (Marriage Act, SY 2012, c.17, s. 45 (1)) • Victim can apply for an Emergency intervention order against their perpetrators through this act. (Family Violence Prevention Act, SY 2005, c.7, s. 4)

To date, six provinces (Alberta, Manitoba, Nova Scotia, Prince Edward Island, Newfoundland and Labrador and Saskatchewan) and three territories (Northwest Territories, Yukon and Nunavut) have proclaimed specific legislation on family violence:

Alberta: Protection Against Family Violence Act

Manitoba: Domestic Violence and Stalking Act

Newfoundland and Labrador: Family Violence Protection Act

Northwest Territories: Protection Against Family Violence Act

Nova Scotia: Domestic Violence Intervention Act

Nunavut: Family Abuse Intervention Act

Prince Edward Island: Victims of Family Violence Act

Saskatchewan: Victims of Domestic Violence Act

Yukon: Family Violence Prevention Act

These civil statutes are designed to complement protections in the Criminal Code. They offer further protection to victims of family violence. Civil measures provided include emergency intervention orders which may grant the right for only the victim to remain in the home and use the family vehicle. They may also restrain the abuser from communicating with or contacting the victim or members of the victim's family.

Other jurisdictions provide for family violence protection orders under their family law legislation, for example, the Family Law Act in British Columbia.³⁰

²⁹ Age of Majority Act, RSY 2002, c.2, s. 1

³⁰ <http://www.justice.gc.ca/eng/cj-jp/fv-vf/laws-lois.html>

International Law Framework

The United Nations and international law makers have had forced marriage on their radar for many years. There are international documents, consensus and agreements that address this issue. These declarations do not necessarily form part of international law, but at times they are powerful tools in applying diplomatic and moral pressure to governments that violate any of its articles. It is widely accepted that there is a requirement for the free and informed consent of both parties to a marriage, and Canada is a signatory of several international conventions relating to forced marriage.³¹

This international legal framework is the foundation for fighting forced marriage at home and abroad.³²

Canada is signatory (and bound) by the following international treaties:

1) **Universal Declaration of Human Rights, 1948:**

Article 16(2) states: "Marriage shall be entered into only with the free and full consent of the intending spouses."³³

2) **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW):**

In particular Article 16 of General Recommendation 21 on Equality in Marriage and Family Relations which states:

- a. States 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:
 - i. The same right to enter into marriage;
 - ii. The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- b. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

This Convention also states:

"16. A woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being. An examination of States parties' reports discloses that there are countries, which, on the basis of custom, religious beliefs or the ethnic origins of particular groups of people, permit forced marriages or remarriages. Other countries allow a woman's marriage to be arranged for payment or preferment and in others women's poverty forces them to marry foreign nationals for financial security. Subject to reasonable restrictions based for example on woman's youth or consanguinity with her partner, a woman's right to choose when, if, and whom she will marry must be protected and enforced at law."³⁴

³¹ http://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/mar/chap4.html#a4_1

³² http://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/mar/chap4.html#a4_1

³³ <http://www.un.org/en/documents/udhr/>

³⁴ <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm><http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

- 3) Convention on the Rights of the Child (CRC):** While this convention does not speak directly to forced marriage, it is relevant to protecting children (under 18 years of age) from violence, abuse and coercion and ensuring that they have access to education, housing free of violence and promotion of social, spiritual and moral well-being and physical and mental health.³⁵
- 4) International Covenant on Civil and Political Rights (ICCPR):** Similar to the previous convention, this covenant speaks to the international recognition that all persons should have the “inherent dignity” of a human person, that enjoys civil and political freedom, freedom from fear and that every person should be able to enjoy his/her civil, political, economic, social and cultural rights. Most importantly, it speaks to the right of all peoples to have self-determination, will not be subject to torture or cruel treatment or be held in slavery, forced or compulsory labour.³⁶
- 5) International Covenant on Economic, Social and Cultural Rights (ICESCR):** Article 10 speaks specifically to consent in marriage:

“Article 10: The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.”³⁷

³⁵ <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

³⁶ <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

³⁷ For more information on where to find further information on international conventions, laws and covenants, please see the Department of Justice’s “Annotated Bibliography on Comparative and International Law Relating to Forced Marriage.” (<http://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/mar/pdf/mar.pdf>)

Legislation in Other Countries

Many countries have legislation that is intended to deal with the issue of forced marriage, including criminal laws that make forced marriage a crime. The following is a collection of criminal / civil laws in some other countries that deal with the issue of forced/non-consensual marriage.³⁸

Australia:

Forced Marriage in Australia is a Criminal offence via the *Commonwealth Criminal Code Act 1995*. It is illegal to force someone into marriage or marry a person who you know does not consent. Forcing someone to get married is punishable by up to four years in prison. If the person is under 18, the punishment is seven years in prison and increases again if a child was taken overseas to be forced into a marriage. It is illegal to marry under any circumstance under 16 years of age and if both people are under 18.

Belgium:

Forced marriages is punishable with a jail term of one month to two years or maximum fines of 500 to 2,500 Euros. An attempted forced marriage is prosecutable with a jail term of 15 days to a year or a fine of 250 to 1,250 Euros.³⁹

England/Wales:

Parents who forced their children into marriage can be sent to prison for up to seven years. This applies to UK Nationals both within the UK and abroad.⁴⁰

There are civil "Forced marriage protection orders" that victims (or relevant third parties) would have to apply to the court for, which, if breached, would add an additional maximum penalty of five years in prison for the victim's family who forced them to get married.⁴¹

At 16 years old, you are able to consent to a marriage, but a person under 18 cannot get married without parental consent. Forced marriage is now a criminal offence, punishable by prison as of June 16, 2014.

Pakistan:

S. 498C of *Criminal Law (Third Amendment) Act, 2011* – Chapter XXA of Offences against women states: "Prohibition of forced marriage: whoever coerces or compels a woman to enter into marriage can be imprisoned for up to seven years no less than three years and shall be liable to find of 500,000 rupees."

³⁸ *The marriage of two parties is under the assumption that both parties are fully consenting to the marriage. If one or both parties do not consent, the marriage is void.*

³⁹ "Western Resistance: Special Report: Muslim Forced Marriages in Europe," 8 June 2006, <http://www.westernresistance.com/blog/archives/002305.html>.

⁴⁰ *The Forced Marriage (Civil Protection) Act 2007 (c 20)*

⁴¹ <http://www.bbc.com/news/uk-27830815>

Norway:

Section 222 of the *General Civil Penal Code* states that anyone who forces someone else into a marriage is guilty of causing a forced marriage. The penalty is prison for a maximum of six years. Anyone who aids or abets will face the same penalty.⁴² Section 220 of the Penal Code was amended prevent children being forced to marry. A penalty can be imposed on any person who enters into marriage with a child under the age of 16, or who aids and abets that marriage. The penalty is imprisonment for a period of up to four years.⁴³

Scotland:

Under the Forced marriage etc. (Protection and Jurisdiction Act) (Scotland) 2011, which mirrors the UK's Forced marriage (Civil Protection Act, 2007), you can apply for a specific civil remedy for those threatened with forced marriage. These orders can move someone to a safe place, stop the behaviour of the perpetrator towards the victim, force the perpetrator to give up documents or locations, etc.

As of September 2014, forcing someone into marriage was made a criminal offence punishable by prison.⁴⁴

United States of America:

California, Maryland, Minnesota, Mississippi, Nevada, Oklahoma, Virgin Islands, Virginia and Washington (DC) are the only states that have laws that pertain to forced marriage. Most of them are Criminal or Penal code offences that are punishable from two years to 10 years in prison. All of them apply to women and some of them include men. Maryland is the only state that includes penalties and criminalization of someone who knowingly aided, abetted, conspired or benefitted financially from the forced marriage.⁴⁵ According to forced marriage advocates in the USA, there have been no forced marriage prosecutions under these laws.⁴⁶

India:

Rights relating to marriage are governed by various religious personal laws, which vary depending on religious community or affiliation.

Relevant legislation include the Constitution, the *Hindu Marriage Act 1956*, the *Muslim Personal Law (Shariat Application) Act 1937*, the *Indian Christian Marriage Act, 1972* and the *Special Marriage Act 1956*.

There are civil laws like the *Prohibition of Child Marriage Act, 2006* and the *Protection of Women from Domestic Violence Act, 2005* which can be used to prevent child and forced marriage as it is understood as a form of domestic violence.

⁴² As with most countries, it is assumed that marriage is void if one party did not consent: Section 1a of the Marriage Act of Norway: "Women and men have the same right to choose a spouse freely. They shall contract the marriage of their own free will and by their own consent."

⁴³ https://www.politi.no/vedlegg/skjema/Vedlegg_673.pdf

⁴⁴ *Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011* and <http://www.gov.scot/Topics/People/Equality/violence-women/forcedmarriage>

⁴⁵ <https://globaljusticeinitiative.files.wordpress.com/2011/12/forced-marriage-laws-of-the-us-states-alanen.pdf>

⁴⁶ <http://www.tahirih.org/site/wp-content/uploads/2014/02/Tahirih-MEMO-State-Criminal-Laws-Forced-Marriage-07.29.13.pdf>

In all four types of marriage (Hindu, Christian, Muslim and Special), marriage must have full consent from both parties or parents/guardians. There are fundamental rights of the child and person that guarantee freedom, right to life, equality and association, which is where forced marriage victims could apply for writs of habeas corpus to prevent harassment, continuation of unlawful abuse, etc. In cases of forced marriages, these writs are useful to argue illegal confinement, forced custody, impairment of movement and to reiterate protection of women and girls from going back to abusive family homes.⁴⁷

Under the *Protection of Women from Domestic Violence Act*, the victim could apply for a protection order or cessation of the forced marriage.⁴⁸

Conclusion

This toolkit sets out information on existing legislation relevant to the issue of forced marriage.

This toolkit should not be used as legal advice. Please seek your own legal counsel or legal representative regarding your individual case.

For more information and resources on Forced Marriage in Canada:

www.salc.on.ca/forced-marriage

⁴⁷ http://www.interights.org/userfiles/Chapter_4.pdf

⁴⁸ Section 12 (5) PWDVA