Written Submission of The Barbra Schlifer Commemorative Clinic to the Senate Standing Committee on Human Rights Regarding the Committee's Review of Bill S-7, "*Zero Tolerance for Barbaric Cultural Practices Act*"

December 8, 2014

Bill S-7, introduced by the Government of Canada on November 5, 2014, if passed, will result in increased criminalization and deportation of certain racialized communities in Canada and will re-victimize women and children who are survivors of violence. As an organization that has worked for nearly 30 years exclusively with women survivors of violence, we are particularly concerned that the proposed changes will create further institutional barriers for already marginalized communities to report violence and receive support.

Background on the Barbra Schlifer Commemorative Clinic

The Barbra Schlifer Commemorative Clinic has been providing front-line services to women who have experienced all forms of violence since 1985. Our services include free legal representation, professional counseling and multilingual interpretation. We also engage in various educational initiatives, including public legal education, professional development for legal and non-legal professionals and clinical education for law students. We also engage in various law reform activities both within Canada and internationally, and consult broadly with all levels of government on policy or legislative initiatives that impact on women survivors of violence. We assist over 4,000 women every year through our legal, counseling and interpreters services.

Background on Violence Against Women and Forced Marriage in Canada

Violence against women is a national problem, not one that lies solely within immigrant communities. In Canada a woman is killed by a woman is killed every 6 - 7 days by a partner or ex-partner. In Canada there are an estimated 1200 cases of missing and murdered Indigenous women, half of them since 2000. The 2013 report by South Asian Legal Clinic on forced marriage showed that there were 200 documented cases of forced marriage in in Ontario collected over a two year span.

Since 2010 our clinic has provided specialized service provision, programming and education to address forced marriage. In 2010, we created the Outburst, Young Muslim Women Program, a leadership development and support service for young Muslim women. The Outburst program has an advisory committee made up of six young Muslim women who community leaders and survivors of

violence.

Outburst! has delivered national training initiatives with the South Asian Legal Clinic on the occurrence and responses to forced marriage and so-called honour-related violence including to the Department of Justice and Calgary Police. Outburst has provided advisory assistance to the Canadian government and policy makers on the continuum of violence experienced by women.

Through our programming we have gained key insights into understanding the needs of forced marriage survivors.

- Forced Marriage occurs in all communities across religions regardless of race, gender, class, sexuality.
- All individuals have the right to freely choose marriage and a spouse
- Each individual deserves to be informed about their options and make enthusiastic consensual decisions based on this knowledge.
- How survivors create safety and choose to heal is up to these individuals to define. For many of the survivors we have worked with this means not criminalizing their families. Instead it means services for housing, employment, counseling and education however they face many barriers accessing these services and systems.

Summary of Key Concerns with Bill S-7

Bill S-7 proposes amendments to the *Immigration and Refugee Protection Act* (IRPA), the *Civil Marriage Act,* the *Criminal Code of Canada* (CCC), and the *Youth Criminal Justice Act* amongst others. The Barbra Schlifer Clinic is gravely concerned that:

- The proposed amendments are not informed by or responsive to the experiences of women and girls who have survived violence, including in the form of forced marriage.
- Making permanent residents and foreign nationals inadmissible solely due to the actual or "potential" practice of polygamy is disproportionate and unnecessary given existing criminal and immigration law prohibitions, and further risks merely targeting certain racialized communities for exclusion from Canada.
- The enactment of a specific offence in relation to forced marriage or marriage under 16 in the CCC is unnecessary, intimidating to the individuals it is intended to protect and harmful, and will only result in driving issues of violence against women further underground.
- The civil marriage amendments, while facially neutral, are being put forward in a context that target certain racialized communities that are perceived to have "unenlightened" or "barbaric" practices. In Canada,

federal and provincial legislation around contracting marriages allowed for parents to consent to the marriages of minors in some provinces, which has led to child marriages. This situation pre-exists current immigration levels in Canada, and to frame it as an immigrant issue mischaracterizes the situation.

- The power given to youth court judges to issue orders could result in the preventive detention and monitoring of women and girls under the guise of their own protection. Such orders will create a further barrier to women accessing justice and support as they seek to preserve their autonomy in the face of a paternalistic state.
- The amendments do not consider the timeframes involved in getting protection orders, and the fact that oftentimes young women are living with their family members and will have to face their abusers to seek such orders.
- The Bill evidences a lack of meaningful consultation (closed door and invitation only consultations), lack of transparency and public participation and debate.

Inadmissibility for Polygamous Marriages

Bill S-7 introduces a new ground of inadmissibility by adding section 41.1 (1) and (2) to the IRPA. The new provision provides that permanent residents and foreign nationals could be inadmissible if they are or **"will be"** practicing polygamy with someone who is or **"will be"** physically present in Canada at the same time. The inclusion of this new ground of inadmissibility in the context of an Act that seeks to prevent "barbaric cultural practices" is clearly based on a misinformed and stereotyped view that polygamous unions are by their very nature violent or coercive. In our work with women survivors of violence over the last 30 years, we know this not to be the case. Women have multiple religious, political, economic and social reasons for entering into different family structures, and violence and abuse can occur across cultures and all forms of intimate-partner relationships and family structures. The preventative criminalization of this form of marriage extends state powers into specific family arrangements in an alarming way. Existing laws are sufficient to prevent these unions from taking place.

The proposed amendment specifies that polygamy shall be interpreted in a manner consistent with 293(1)(a) of CCC. The Criminal Code does not provide a definition of polygamy; however its interpretation goes beyond valid legal marriages to encompass conjugal unions and in Canada including *de facto* marriage unions (e.g. religious or cultural ceremonies that are not formalized). Section 293 of the CCC further provides that polygamy is an indictable offence with the maximum sentence being five years imprisonment.

In addition to already being criminalized in Canada, polygamous and bigamous relationships are also prohibited in the immigration context through section 117(9)(c)(I) of the *Immigration and Refugee Protection Regulations* (IRPR), and could also be caught by section 4 (bad faith provision), section 40 (inadmissibility for misrepresentation) and section 41 (inadmissibility for non-compliance with the Act) of the IRPA. Moreover, there are detailed mechanisms already in place governing the immigration of spouses in potential or actual polygamous unions. As outlined in section 13.2 of Overseas Processing Manual 2 – Processing Members of the Family Class, only the first spouse may be considered a spouse for immigration purposes if a conversion to a monogamous relationship has occurred, and immigration officers are provided with detailed guidelines on assessing applications where polygamous unions are a concern.

Given that the above mechanisms already exist to address policy concerns that the Government of Canada may have in relation to polygamous unions, and the significant changes we have already seen to the immigration and refugee system in Canada through *Bill C-31* and the *Faster Removals of Foreign Criminals Act*, we are concerned that the inclusion of this new ground of inadmissibility is nothing more than an attempt to further strip permanent residency and deport more and more racialized people from Canada, regardless of how long they have been here. As part of this, we would note that the practice of polygamy in Canada draws a maximum sentence of 5 years, which alone would be insufficient to remove permanent residency under section 36 of the IRPA for serious criminality (unless a sentence of more than 6 months has been imposed). The proposed provision therefore erects additional barriers to entering and settling in Canada on some permanent residents based on their cultural, religious or political practices in relation to family structure.

Lastly, given that section 42 of the IRPA provides that foreign nationals (other than protected persons) are inadmissible for having an inadmissible family member, inadmissibility for polygamy also has the potential of negatively impacting survivors of violence who may not yet have secure immigration status in Canada (such as those going through the sponsorship processes or not yet landed through a humanitarian and compassionate application). From our experience, women and girls are simply not going to come forward with their experiences of violence if they or their family members risk criminalization and deportation.

New Criminal Code Provision Criminalizing Forced Marriage

Bill S-7 proposes adding in the part on offences against conjugal relations a new section 293.1 which directly criminalizes the performance and participation in a forced marriage and marriage of persons under the age of 16 years of age. The

Bill further amends the requirements for the defense of provocation to murder and manslaughter (proposed section 232(2)) as well as removal of persons from Canada (proposed section s.273.3 (1)). It is our position that a new and separate provision in the criminal code in relation to forced marriage is both unnecessary and harmful. Firstly, forced marriage, as a form of violence against women and children, is already criminalized in Canada. Specifically, provisions related to assault, assault with a weapon, sexual assault, forcible confinement, kidnapping, removal of persons from Canada, and uttering threats can and could be used to substantively address issues of forced marriage through the criminal law.

Moreover, a mere criminal law provision on its own will not address violence against women and girls, particularly one that further targets marginalized communities for increased policing. In our work, we have witnessed the unresponsiveness of police and their lack of sensitivity and knowledge about the nature and impacts of violence; -women and girls are not believed when they come forward with experiences of physical and sexual violence, that they are not provided opportunities or given information to meaningfully participate or make choices in the process, that they are further shamed and isolated from their families, communities and broader society, that they face economic consequences, dual charging, often lose their housing, childcare benefits, and risk their immigration status in Canada. These fundamental issues preventing women from seeking and receiving protection and support are not going to be addressed with a new provision directly criminalizing forced marriage. Additionally, there needs to be recognition that there are further barriers that young women face when leaving their families. It is our belief that the current approach only exacerbates the barriers that women already face in coming forward to report violence and abuse. Indeed, it is already the case in Canada that out of every 100 incidents of sexual assault, only 6 are reported to the police.

This was clearly identified in the South Asian Legal Clinic of Ontario's 2013 report, "Who if when to marry: A report on incidents of Forced Marriages in Ontario", which strongly recommends against including forced marriage as a separate criminal offence under the Criminal Code.

> Criminalization of FM's creates barriers for victims who need access to justice. First, victims will be more unlikely to report FM's because of their internal struggle with placing their family at risk. Second, due to the increased stigma, perpetrators of FM will be more skilled at hiding their attempts at forcing a marriage. The unfortunate result of creating these barriers is that victims will go deeper underground, instead of seeking support"

According to young women survivors in our youth program *Heartbeats: The IZZAT Project*, which addresses family violence including forced marriage:

> "As survivors, we would not feel safe coming forward if it means criminal sanctions or deportation for our own families. When making decisions about this particular bill, please ensure that you are focusing on the safety and needs of survivors. We have a right to define our safety, and this Bill makes us feel incredibly unsafe."

We are further concerned about the specific language used in drafting the provision, and the potential for re-victimizing survivors of violence. Specifically, the proposed provision reads very broadly in that **"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"** will be guilty of an indictable offence. This is extremely broad and the person being forced into the marriage could also be caught by this provision.

Further, the proposed legislation does not consider the lived realities of women and girls who have experienced violence. The proposed addition of section 810.02 of the CCC specifies that any person who fears on "reasonable grounds" that another person will commit offence under s.273.3 (1), or 293.1 or 293.2 may lay an information before a provincial court judge. This essentially requires a young girl to report her fears to the police herself so that a judge can cause her and her family to appear before the court. She then has to adduce sufficient evidence and, if successful on her application, a judge may issue a peace bond for 12 months (first offence) or 2 years (second offence). We know that the track record of peace bonds in keeping women safe is abysmal, and that it can, in fact, prove a false security. We also know that the criminal justice system is experienced as alienating and inflexible and that women and girls therefore report incidents of physical and sexual violence to the police in lower numbers than for any other crime.

It is also troubling that Bill S-7 provides that judges may make weapons prohibitions when there is a concern that forced marriage or marriage outside Canada may occur; however, in April, 2012, the federal government passed Bill C-19, *An Act to Amend the Criminal Code and the Firearms Act*. This legislation kept intact the registry for prohibited and restricted firearms, but repealed the provisions related to the long gun registry. The registry told the police what firearms were registered to the perpetrator so that they could locate and remove rifles and shotguns that had been legally acquired. It is concerning that the government now recognizes the need for weapons prohibitions, but has gutted the mechanism by which such prohibitions could be meaningfully enforced.

In addition, we are concerned that the amendments regarding the solemnization of marriage serve to further target certain communities for harsher punishment. This is because it is already an offence to solemnize a marriage contrary to the

law (sections 294 and 295 of the CCC). While the penalty for violation of these provisions is 2 years, the new section 293.2 increases the penalty for forced marriage to 5 years.

Civil Marriages Act Amendments

While the new national age of marriage at 16 is an important step in aligning our laws with international standards, we are concerned about the framing of the provision in terms that again perpetuate myths and stereotypes about racialized communities in Canada and prevalence of violence against women and girls within those communities. Given the proposal for a new requirement of free and "**enlightened**" consent (as opposed to say, "informed", consent), Bill S-7 is again premised on the notion that certain communities are unenlightened (and engage in "barbaric practices"), and it is our belief that this political framing of the amendments cannot be disentangled from the specific provisions themselves. It simply will not be sufficient to change the name of the short title of the Act when the legislation itself is premised on such harmful stereotypes. Again, the framing of this change makes the assumption that child marriage is being imported into Canada when in reality it has been Canadian laws that have created the environment in which child marriages happen.

Youth Criminal Justice Act Amendments

The amendments to the *Youth Criminal Justice Act* in section 14(2) enables youth justice courts to make orders against a young person under the new section 810.02 (recognizance – fear of forced marriage or marriage under age of 16 years). It is unclear who the youth is being referred to here and if the provision contemplates orders against the victim of forced marriage. While the specific wording of the proposed legislation speaks to orders against "defendants", the public statements suggest that youth court judges can make detention and supervision orders against victims themselves (who could be a defendant and family members and others may presumably bring the victim herself before the courts as a defendant). For example, the comparative chart published by CIC says:

> A youth justice court would also have jurisdiction to impose a new peace bond where there is a fear that a young person may commit a forced or early marriage offence.
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> The new peace bond to prevent forced or early marriage, when ordered against a young person, would be governed by the provisions of Part XXVII of the *Criminal Code,* as is the case for other peace bonds.

From our experience working with women survivors of violence, such paternalistic measures only work to create further barriers to accessing justice and safety. Specifically, youth need autonomy and the right to choose when, if and how they use legal systems.

Lack of Meaningful Consultation

We are also concerned about the process used to introduce the bill and rush it through the senate. As providers of services aimed at women who find themselves in the situations contemplated by the Bill, we would welcome a broader debate in which we could contribute to a gender-based analysis of the Bill and its anticipated outcomes.

As a violence against women agency that does direct service provision for young women facing forced marriage and has an advisory committee for our programming of survivors, we strongly urge the Canadian government to have meaningful consultation with young women. This population disproportionately faces forced marriage and the exclusion of their voices from the consultations is a key example that this Bill is not responsive to the needs of those most affected by forced marriage: survivors.

Conclusion

The content and framing of the proposed changes betrays a flawed ideology that locates violence against women as a "cultural" issue which only occurs in some communities, and ignores statistics and women's lived reality that shocking levels of violence against women occurs every day in Canada across cultures. Moreover, Bill S-7 continues to marginalize immigrants to Canada who can never fully settle and feel safe, because they are forever at risk of being stripped of their permanent residence, and sent back to a homeland, regardless of how long ago they left. It will serve as an example of how our government is failing to listen to survivors and targeting racialized communities for exclusion and deportation from Canada.

The Barbra Schlifer Clinic has worked hard to raise awareness about various forms of violence against women and girls, including forced marriage, in a way that empowers communities and service providers to address these issues. A response that listens and responds to the experiences of survivors of violence would address the practical barriers to justice that entrap women (such as convoluted legal systems in family, criminal and immigration law, a lack of safe affordable housing, unsafe, unaffordable and and piecemeal childcare, inadequate settlement/violence against women services) which are at the root of violence against women. Bill S-7 is not an appropriate response.