

# Mail-Order Brides and

MARIE-CLAIRE BELLEAU

*Cet article analyse dans une perspective féministe et intersectorielle les lois sur l'immigration sur les mariages par*

*form of immigration law. The Immigration and Refugee Protection Act<sup>3</sup> enacted policies which could poten-*

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*correspondance. L'auteure déclare que bannir ces mariages aurait un impact dévastateur sur la vie des femmes impliquées, augmentant leur vulnérabilité face aux trafiquants. Elle préconise au lieu, une réglementation des mariages par correspondance afin d'offrir aux femmes l'accès à toutes les mesures nécessaires à la prévention et à leur protection..*

This policy research paper was proposed and developed under an urgent call for proposals in September 1998, entitled *Trafficking in Women: The Canadian Dimension*. The purpose of this call was to generate research, which could provide concrete knowledge on the extent and nature of trafficking in Canada, in order to develop policies and programs which would recognize and protect the human rights of trafficked women.

This article is an updated excerpt from the report "Trafficking in Women in Canada: A Critical Analysis of the Legal Framework Governing Immigrant Live-In Caregivers and Mail Order Brides" written in 2000.<sup>1</sup> In June 2001, the federal government replaced the *Immigration Act* of 1985<sup>2</sup> with a new legislative framework which resulted in a major re-

tially affect different practices of trafficking in people, and, in particular, the mail-order bride [MOB] trade. This article takes into consideration some of these changes. However, as First World men and the Third World women involved in the mail-order bride trade seek traditional relationships based on marriage, my focus is mainly on the implications of the marital link for immigration purposes.

The "mail-order bride" phenomenon creates a relationship of dependence likely to lead to the exploitation of the women involved. It is based on introducing men and women from different countries through agencies that specialize in placing personal ads about potential wives in catalogues or on the Internet. The ultimate goal is an intercultural marriage between two people, with the objective of enabling the woman to immigrate. The result is a flourishing and lucrative industry involving the trafficking of women from the Third World to consumer-husbands in the First World.

In Canadian law, there is no specific legislation governing the mail-order bride trade. In addition, the various legal transactions involved in

this phenomenon fall within several different areas of Canadian law, both private and public. It raises issues relating to contract law, immigration law, marriage law, criminal law and others. In Canada, most of these matters involve the jurisdiction of both provincial and federal levels of government. Furthermore, private international law regularly enters into any legal analysis because the bride is a foreign national.

In addition, a critical analysis of the legal framework governing the practice of mail-order brides raises questions involving government immigration policy. It is important to maintain a vigilant and critical approach to the immigration policies of certain Western countries, which, under the pretext of regulating trafficking in people and protecting women, are closing their doors to the most disadvantaged people in Third World countries. I favour the prevention of trafficking in women because it is a growing and, in my view, inevitable phenomenon in an era of increased mobility, and because it has a significant effect on the lives of women. Nevertheless, I am opposed to an outright ban on the mail-order bride trade. Instead, I recommend regulating the mail-order bride industry in order to provide the women involved with complete access to measures necessary for prevention and protection. An underground market resulting from a prohibition on mail-order brides would have a devastating impact in that it would simply heighten the vulnerability of women. Therefore, from my chosen perspective, I subscribe closely to one of the general objectives stated in the former *Immigration Act*, which was "to deter

# Canadian Immigration Policy

those who assist in the illegal entry of persons into Canada and thereby minimize the exploitation of and risks to persons seeking to come to Canada.”<sup>4</sup>

## Part I: Unequal Relationships

### Inequalities Between Countries

The “mail-order bride” industry exploits the economic inequality between poor countries and prosperous countries, as well as the most demeaning and discriminatory cultural and ethnic stereotypes of women. This phenomenon thus fosters subordination based on ethnicity, sex and social class within a country, between countries, and between individuals.<sup>5</sup> These structures of subordination, which are closely interconnected, contribute to the isolation and vulnerability of the women being trafficked when they enter Canada.

In the international context, the first inequality exploited by the MOB trade is the economic inequality between First and Third World countries.<sup>6</sup> The economic plight of developing countries impels their governments, as well as their citizens, to look elsewhere for solutions to their constant poverty. First World countries are lands of plenty sought after by people motivated by a desire to improve their lot and that of their families.

Immigration admission criteria, based mainly on educational and financial qualifications, make it difficult, if not impossible, for people from the Third World to acquire residence, and then citizenship, in the countries of the First World. In

this context, the MOB industry has taken advantage of North American pro-family immigration policies, which favour the traditional family unit and the reunification of the members of that unit. The MOB trade uses the family class to create an express route to Canada, without which it would be impossible for these women to gain access.

### Sexism on a Global Scale

The effects of “bilateral” sexism combine to create a situation favourable to the development of the MOB trade.

On the one hand, sexism in the countries of emigration encourages trafficking in women. As a result of sexism, women are considered to have less value than men. Since boys remain the hope of the family, cultural and legal customs deprive girls and

less likely to receive an education or pursue higher education. Their ability to find paid employment is therefore diminished. Moreover, even in the workplace they are the first to suffer the effects of instability and are rapidly being replaced by advanced technology.<sup>7</sup> To this generalized sexism can be added the cultural stereotype of the “old maid,” causing a woman still young to be considered past the age of marriage, with her prospects for starting a family diminishing with each passing year.<sup>8</sup> For such a woman, the MOB trade can mean realizing her dream<sup>9</sup> of getting married, starting a family, and ensuring her survival and that of her family. Women in rural communities are often more at risk of living in poverty than women in urban areas.<sup>10</sup> Consequently, the secondary role played by women in societies<sup>11</sup> that are often

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women of access to property ownership. For example, when it comes to inheritance, male heirs are favoured at the expense of the women in the family. Similarly, the dowry system transfers ownership from a married woman’s father to her husband. Finally, legal restrictions on a woman’s capacity to enter into a contract, combined with a lack of access to credit, often make it impossible for women to be party to a contract and therefore to acquire property. Women are also

profoundly patriarchal<sup>12</sup> is an incentive for brides to leave their countries. As women are still second-class citizens in many Third World countries, the MOB trade can take advantage of the poor treatment suffered by women who are essentially reduced to the role of breeders, by painting an enticing picture of a better future in the First World.<sup>13</sup> All these factors combine to make these women into citizens who are easily expendable.

In countries afflicted by economic hardship, women are even more likely to bear the costs of poverty. They are the least skilled of the workers, and therefore the least likely to find work in economies with high unemployment.<sup>14</sup> Moreover, some Third World countries, such as the Philippines, are economically dependent on the foreign currency sent home regularly by their nationals to family members. Such women are therefore encouraged to leave the country to seek

and sexually uninhibited women match the fantasies of domineering and controlling consumer-husbands.

In short, mail-order brides actually become merchandise, victims of bilateral sexism. They are victims of sexism both in their countries of origin and in the countries where they settle. They provide domestic and sexual services that are profitable for their families and the countries they leave behind, as well as for the consumer-husbands and the countries to

bride's isolation from her own cultural group make her even more subordinate to him in terms of the expectations of their social milieu. In a more fundamental way, the intersection of the various inequalities, such as ethnic, economic, educational and generational, place the bride in a constant position of subordination to the consumer-husband.

In short, all the factors combine to relegate the bride to a subordinate position in the male-female dichotomy.

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their fortunes elsewhere and help support their families.<sup>15</sup> They are even sometimes hailed as heroines because they become mail-order brides to support their families economically, and because they represent an opportunity to immigrate and secure a better future for their relatives.<sup>16</sup> These women are therefore vulnerable to the traffickers who lure them with the prospect of better living conditions in foreign countries.<sup>17</sup> In short, widespread sexism in the countries of emigration leads women to the MOB trade.

On the other hand, sexism in the countries of immigration also leads consumer-husbands to participate in the trafficking in women. Consumer-husbands are embittered. They reject the women in their own countries, whom they find too demanding of them as husbands and men, too career-oriented and assertive. In short, they regard the women in their own countries as too feminist and insufficiently inclined to satisfy their needs as a husband. These anti-feminist sentiments impel the consumer-husbands to seek, through the MOB trade, wives able to provide them with domestic and sexual services. The stereotypes of docile, submissive

which they immigrate. In this context, the MOB trade amounts to trafficking, and women are the goods being trafficked.

#### **Inequalities Between the Sexes**

The mail-order bride trade is a form of sexual exploitation.<sup>18</sup> The sexual inequality between the bride and the consumer-husband is reinforced by a great number of factors. First, the sexism prevalent in her country of origin has convinced the bride that she is a second-class citizen. Second, the anti-feminist stereotypes, leading consumer-husbands to turn to the MOB trade, imply that the objective of a relationship between a man and a woman is the control and domination of the wife by the husband. The relationship is also characterized by the fact that she comes from a developing country while he is a citizen of a First World country. Moreover, the precarious status of the bride places her in a situation of dependence on a consumer-husband who keeps her in fear of deportation and the humiliation of a failed marriage. The consumer-husband's dominant culture in the country of immigration and the

## **Part II: Legal Framework Governing the Mail-Order Bride Industry**

### **The General Legal Framework**

To date, the MOB trade has been completely unregulated. No Canadian legislation contains specific rules to control it. Consequently, national legislation in areas of contract law, immigration law, and the law of marriage and marriage breakdown govern the various aspects of MOB transactions.

I should note at the outset that originally the contractual aspect of MOB practices seemed to me especially significant for the brides. Ultimately, however, I conclude that a contract serves only as a façade or pretext for legal transactions much more centred around immigration law and the law of marriage.

In contrast, immigration law has a more significant impact on the life of the bride. Thus, this area is treated in elaborate detail to identify reforms capable of improving the status of brides and thereby reduce their vulnerability and dependence vis-à-vis their consumer-husbands.

In addressing the issue of the legal framework governing the MOB trade, one needs to pay special attention to the fairness of the penalties currently imposed on the participants. At the moment, the law exposes brides to penalties, while leaving the introduction agencies and consumer-husbands unpunished.<sup>19</sup> Furthermore, it

is important to keep in mind that today legal recourse is an unrealistic option for mail-order brides. They are newcomers whose status in Canada is still precarious. They simply do not have the financial resources to defend their rights. Their culture, beliefs and experiences often lead them to preserve the marital relationship with their consumer-husbands at any cost, and to distrust public and government agencies. In short, legal recourse is a utopian option for many of these brides. However, despite the negative comments regarding legal recourse for mail-order brides, I remain convinced that several reforms could provide solutions to these limitations.

### Canada's Overall Immigration System

Since 1970, Canadian immigration policy has been based on a point system. However, that policy also provides for certain classes of immigrants, which allow foreigners to settle in Canada without being subject to the point system, such as the family or refugee class. Mail-order brides immigrate to Canada in the family class, as dependants of their consumer-husbands. They enter the country with a spouse visa. Under the *IRPA*, they could also enter Canada with a common-law partner visa or a conjugal partner visa. However, at this moment, these last options seem unrealistic for the brides and the consumer-husbands involved in the MOB trade because of their traditionalist goals and often their religious beliefs which lead them to seek marriage.

For my purposes, the *Immigration and Refugee Protection Act*<sup>20</sup> and the *Immigration and Refugee Protection Regulations*<sup>21</sup> govern federal law in regard to immigration.<sup>22</sup>

Foreign nationals seeking to enter Canada are divided into two categories: they are either immigrants or visitors.<sup>23</sup> Immigrants are assigned to one of three classes: the economic class, the family class or the refugee

class. Immigrants admitted to Canada in one of these three classes are granted permanent residence. They may apply for Canadian citizenship after residing in Canada for three years. Visitors have only temporary status during their stay in Canada.

#### *The Economic Class*

Immigrants in the economic class include investors, entrepreneurs, self-employed workers, skilled workers and any other person who applies for immigration. Applicants in this class are assessed and awarded points for factors such as education, occupation, possibility of employment, age and knowledge of English or French. In recent years, Canadian immigration policy, as set out in the annual immigration plan under the former legislation<sup>24</sup> aimed for a significant increase in this class of immigrants, at the expense of the family class.<sup>25</sup>

#### *The Family Class*

Mail-order brides immigrate to Canada as members of the family class. They enter Canada on a spousal visa.<sup>26</sup> In order to obtain the visa, the consumer-husband must provide an undertaking to sponsor the bride, pursuant to which he commits him-

have the effect of entailing a corresponding increase in illegal trafficking in women. Despite the new policy, however, one of the objectives of Canadian immigration law is to facilitate the reunion of Canadian citizens and permanent residents with their close relatives from abroad.<sup>29</sup> Quebec also adheres to this policy.<sup>30</sup> This objective provides a partial explanation for the proliferation of the MOB trade for the purposes of immigrating to Canada.

#### *The Refugee Class*

The refugee class exists for humanitarian purposes.<sup>31</sup> Immigrants in this class are persons fleeing persecution. It is intended for those who qualify under the *United Nations Convention Relating to the Status of Refugees*<sup>32</sup> as well as the regulations of the *Immigration and Refugee Protection Act*.<sup>33</sup> Pursuant to these provisions, some people apply for admission to Canada as refugees from outside Canada, while others do so upon their arrival in Canada.<sup>34</sup> In the case of mail-order brides, only the second procedure (i.e., claiming refugee status while residing in Canada) is relevant.

In addition, it is important to point

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self to supporting her. Upon her arrival in Canada, the bride has permanent residence status.

Until recently, immigration by way of the family class was the primary source of immigration to Canada.<sup>27</sup> However, Canadian immigration policy is now designed to increase the economic class and reduce the family class.<sup>28</sup> This major change in Canadian policy affects the mail-order bride trade. Canada must be vigilant to ensure that this change does not

out the existence of the federal program entitled Women at Risk<sup>35</sup>—a special program within the refugee class, which, as its name indicates, is intended specifically for women. It provides for lower admission criteria for certain women who are particularly vulnerable as refugees, or who have suffered serious trauma likely to require special measures to enable them to settle in Canada.<sup>36</sup> It is intended “to address the special needs of refugee women: whose safety can



Rochelle Rubinstein, "Hide and Seek," linocut prints, each 12" x 12", 1988.

not be ensured; who often do not have family or friends to support or protect them; who are vulnerable to the threat of rape and other forms of violence due to the lack of protection or whose situations are so critical that urgent protection is required.<sup>37</sup> Few women enter Canada under this program, which has been criticized because it does not offset the advantage enjoyed by men in the refugee class.<sup>38</sup>

The granting of refugee status, whether under the general scheme or through the Women at Risk program, requires the presence of a number of factors, such as a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, and the inability, because of that fear, to avail oneself of the protection of the country of which one is a citizen.<sup>39</sup> Furthermore, in order to benefit from the Women at Risk program, a woman must apply from outside of Canada.<sup>40</sup> Only a minuscule number of potential mail-order brides are likely to satisfy those conditions.

In principle, a person admitted to Canada in one category cannot change status while in Canada. A person must leave Canada in order to make a fresh application for admission in the same or another category, unless he or she qualifies as a refugee

"or as a person in similar circumstances, taking into account Canada's humanitarian tradition with respect to the displaced and the persecuted."<sup>41</sup> Thus, a mail-order bride who enters Canada as a spouse in the family class, and whose relationship with the consumer-husband breaks down, cannot satisfy the criteria for another class, such as economic immigrant. Unless there are exceptional circumstances, she must leave the country before making a new application for immigration. In addition, in some cases a person who has been ordered deported or excluded may not re-enter Canada on a visitor's visa without the consent of an officer designated by the Minister.<sup>42</sup> However, the *IRPA* provides for exceptions to this rule. For example, a person may make a refugee claim when she is already in Canada.<sup>43</sup> Furthermore, a person may apply for an exemption from this rule by way of a Minister's permit.<sup>44</sup>

#### Why Women Become Mail-Order Brides

I have no information which would enable me to know whether women who participate in the MOB trade had previously tried to immigrate to Canada or another country under the general admission criteria. Nev-

ertheless, my description of the admission criteria for immigrating to Canada has allowed me to identify some of the reasons why women would become mail-order brides, rather than apply under the general immigration rules.

First, these women are unable to accumulate enough points to immigrate to Canada in the economic class. For example, many mail-order brides would not meet the education criteria. Someone who has not completed secondary school will not earn any of the 25 points allotted for education.<sup>45</sup> This factor is particularly damaging for women in the Third World, where access to advanced education is reserved for men and the higher social classes. While some brides may obtain points for education, if the trade or occupation in which they are employed does not qualify under arranged employment, or their vocational training and experience does not allow them to qualify, they will not score enough points on this factor. Finally, their total points may simply remain below the points necessary to immigrate to Canada in the economic immigrant class, after taking the other factors into account.<sup>46</sup>

Second, the restricted application of the Women at Risk program, combined with the bias in the refugee



Rochelle Rubinstein, "Hide and Seek," linocut prints, each 12" x 12", 1988.

class in favour of men, suggests that mail-order brides have little to expect from the Canadian immigration process. Third, the visitor category does not lead to immigration.

Last, Canadian legislation and the bilateral immigration agreements between the federal government and the provinces give priority to the traditional family unit, family reunification and fostering family relationships. Hence, these women, who are not directly admissible into the economic immigrant class of the Canadian immigration system, resort to engagement or marriage, in line with the pro-family public policy prevalent in North America. The family class provides a genuine, effective and quick way to immigrate since the women are not assessed under the economic immigrant class point system, and the consumer-husbands sponsor their admission to Canada and undertake to support them financially. They need only comply with the health<sup>47</sup> and good character requirements.<sup>48</sup> Marriage allows them to avoid immigration quotas and long waiting periods, and presents a realistic opportunity for entering Canada.

Mail-order brides are granted landing in Canada and become permanent residents of Canada by way of spousal visa.

### Conditions Relating to the Status of Spouse of a Consumer-Husband in Canada

Under the *IRPA*, brides marry their consumer-husbands in their home country before immigrating to Canada. Obtaining a spousal visa for a mail-order bride, raises questions relating to the definition of a spouse, the validity and the invalidity of a foreign marriage, the marriage of convenience and the very young wife.

#### *The Definition of "Spouse"*

The *Immigration Regulations, 1978* enacted under the former *Immigration Act* defined a spouse who is a member of the family class as follows: "spouse, with respect to any person, means the party of the opposite sex to whom that person is joined in marriage."<sup>49</sup> The Regulations also declared that "marriage means the matrimony recognized as a marriage by the laws of the country in which it took place, but does not include any matrimony whereby one party to that matrimony became at any given time the spouse of more than one living person."<sup>50</sup> The definition was often criticized because it expressly excluded marriages between persons of the same sex and common-law relationship.<sup>51</sup>

The *Immigration and Protection of*

*Refugee Act*, enacted in 2001, modified its legislative policy by admitting in the family class, common-law partners, conjugal partners and same-sex relationships. A Common-law partner is defined "in relation to a person, [as] an individual who is cohabiting with the person in a conjugal relationship, having so cohabited for a period of at least one year"<sup>52</sup> and a conjugal partner refers to "in relation to a sponsor, [as] a foreign national residing outside Canada who is in a conjugal relationship with the sponsor and has been in that relationship for a period of at least one year."<sup>53</sup> This new category allows Canadian citizens or permanent residents to sponsor foreign partners residing outside of Canada with whom they have shared a true conjugal relationship for at least a year but with whom they cannot cohabit.<sup>54</sup> The expressions "common-law partner" and "conjugal partner" include same-sex spouses and partners.<sup>55</sup>

#### *Validity of Foreign Marriage*

For the purposes of the *IRPA*, a marriage solemnized in the country of emigration is valid insofar as it complies with the laws of the country in which it took place and the Canadian laws.<sup>56</sup> Thus, according to immigration law, the validity of a foreign marriage is determined both by

the laws of the country in which the marriage took place and by the Canadian laws.<sup>57</sup> However, for other purposes, in provincial courts the formal and substantive requirements for the validity of a marriage may be subject to laws different from those of the place where the marriage took place.<sup>58</sup> The onus of proving the existence of a valid marriage, by the production of authentic documents to the federal and provincial immigration authorities, is on the spouse and her consumer-husband.<sup>59</sup>

If the sponsorship and visa applications are determined to be acceptable according to the family class criteria, and the validity of the marriage is established, the bride becomes a permanent resident of Canada. Her status is not subject to any conditions. The *IRPA* defines a permanent resident as a person who has obtained the status of permanent residence, who has not become a Canadian citizen and who has not ceased to be a permanent resident and who has not lost this status for one of the reasons enumerated under section 46 (1) of the act.<sup>60</sup>

Section 63 (1) of the *IRPA* provides for an appeal of the refusal of an officer to accept the consumer-husband's sponsorship application. I should also note that a permanent resident may be subject to various loss of status proceedings in Canada. For example, if she remains outside Canada for an extended period of time, she may be regarded as having abandoned her permanent resident status in Canada.<sup>61</sup> In addition, some grounds may lead to a deportation order and to cessation of permanent resident status.

#### ***Invalidity of a Foreign Marriage***

If a marriage is invalid pursuant to the laws of the country in which it took place, the application by the consumer-husband to sponsor the bride will be refused.<sup>62</sup> The bride will be refused entry to Canada because she does not satisfy the admission requirements for the family class.

However, the issue of the bride's

permanent residence status arises when the bride is already living in Canada and her marriage abroad is determined to have been invalid after she entered Canada. When the parties are acting in good faith, they will do everything possible to satisfy the requirements as to the form and substance of the marriage in the bride's home country. However, a consumer-husband using the MOB process as a pretext for other activities has every interest in contravening the marriage laws in order to contest his responsibilities. A bride who has been deceived in this manner finds herself in an insecure situation, since her permanent resident status depends on the validity of her marriage. In that case, the consumer-husband will be able to threaten to have the bride deported if she complains about the way he is treating her.<sup>63</sup> In these circumstances, the penalties provided for in immigration law are imposed solely on the bride.

Abusive consumer-husbands were rarely subjected to the offences and penalties provided for in the former *Immigration Act*.<sup>64</sup> A search of the case law revealed that these provisions were seldom invoked in situations involving spouses and fiancées. As a result, consumer-husbands escaped punishment. Time will tell if the *IRPA* will provide better recourses against abusive Canadian citizens.

#### ***Marriages of Convenience***

A wife who has entered into a marriage of convenience is not a "member of the family class" within the meaning of the Act, and thus is an illegal immigrant. The purpose of section 4 of the *Immigration and Refugee Protection Regulations* is to combat marriages of convenience. It states: "no foreign national shall be considered a spouse (...) if the marriage (...) is not genuine or was entered into primarily for the purpose of acquiring any status or privilege under the Act." The finding against an immigrant of a marriage of convenience may lead to an inadmissibility or a removal.<sup>65</sup>

Under the former *Immigration Act*, in the case of a marriage of convenience, intention was assessed on the basis of two factors: (1) the marriage was for the purpose of gaining admission to Canada; and (2) there was no intention to reside permanently with the Canadian husband.<sup>66</sup> Only the bride's intention, and not that of the consumer-husband, was to be taken into consideration by the immigration officers.<sup>67</sup> Some experts considered this exclusion exceptional because the two factors had to be both present.<sup>68</sup> Others regarded this interpretation of the legislation and case law to be erroneous. According to the latter, proof of one factor was sufficient to establish that the marriage is one of convenience.<sup>69</sup> Here again, the provisions of the *IRPA* may or may not lead to different interpretations.

In the case of a marriage of convenience, the sponsorship of the bride by the consumer-husband will be rejected. The bride cannot be admitted into Canada because she does not satisfy the criteria for the family class.

Characterization of a marriage as one of convenience does not violate section 7 of the *Canadian Charter of Rights and Freedoms*,<sup>70</sup> which guarantees the right to liberty, or section 2(e) of the *Canadian Bill of Rights*,<sup>71</sup> which provides the sponsor with the "right to a fair hearing."<sup>72</sup> The bride does not enjoy the right to a fair hearing.<sup>73</sup>

#### ***The Very Young Wife***

Finally, the flourishing MOB trade raises the question of the validity of a marriage abroad involving a very young wife who is still a minor. For example, in *Awada v. Ministère des Relations avec les citoyens et de l'Immigration*,<sup>74</sup> the Quebec review board affirmed the decision of the Quebec Minister of Citizen Relations and Immigration to reject the sponsorship application of a 28-year-old consumer-husband following his marriage in Lebanon to his 13-year-old wife.<sup>75</sup> The review board, like the Minister, considered the sponsorship

of such a young wife to be contrary to public order. In my opinion, this is the position that should be taken. Canada should not allow the tremendous vulnerability of a girl who is still a minor to be exploited through Canadian immigration legislation. The *Immigration and Refugee Protection Regulations* now state that "a foreign national shall not be considered the spouse or common-law partner of a person if the foreign national is under the age of 16 years."<sup>76</sup> I recommend that the minimum age for eligibility for membership in the family class as a spouse be raised from 16 to 18 years. A young married woman will thus be able to continue to enjoy the comfort and support of her family and her friends, in her own culture, until the age of 18. An older bride will be better equipped to deal with her new life in her adopted country. My concern is to limit the dependence and vulnerability of extremely young immigrant wives.

### Conclusions and Recommendations

The mail-order bride phenomenon enables a consumer-husband to meet a spouse from the Third World. It results in the immigration of the bride to Canada. In the last decade, this phenomenon has grown to reach the ranks of the most flourishing industries. However, the sexual, generational, economic, ethnic and educational inequalities characteristic of the relationships created by the mail-order bride phenomenon often lead to abuse and even spousal violence by the consumer-husband. In Canada, it is therefore important to adopt measures to provide protection and legal recourse for the bride, in order to reduce her state of dependence on her consumer-husband. However, it should not be a matter of infringing on the fundamental rights of Canadian citizens in search of spouses from abroad. On the other hand, newly arrived brides too often find themselves in unacceptable situations of subordination and abuse.

From a legal standpoint, many areas of law apply to the various operations involved in the mail-order bride trade. Indeed, these practices raise issues of contract law, immigration law, the law of marriage and marriage breakdown, as well as private international law and criminal law. The result is a tangle of public and private law, provincial and federal law, necessitating a concerted effort on the part of the different levels of government in Canada to implement effective and realistic reforms for the protection of brides.

Within the context of Canadian law, I believe that contract law offers no real remedy for a bride. In immigration law, I recommend the prohibition of serial sponsorship and the raising of the minimum age for a spousal visa, with the aim of reducing the bride's dependence in her relationship with the consumer-husband.

I propose the adoption of measures to encourage brides to take legal action against their abusive consumer-husbands. For example, I suggest that the bride be granted permanent residence and that a legal aid fund be established, two measures that would enable the bride to institute civil and criminal proceedings. These measures would enable brides to find a way to legalize their immigration status in Canada. More generally, I recommend that MOB agencies be regulated.

In this context, the solutions to the various aspects of the MOB trade must be many and varied. Indeed, they must aim at legal reform, diplomatic reform and improved dissemination of information. And they must take place at all levels, i.e., provincial, national and international.

The adoption of the *IRPA* may bring about important changes in Canada. By enlarging the family class definition to include common law partner and same sex relationships, the new legislation allows a wider group of people to be united through immigration. Canada could thus play a much needed greater role in welcoming immigrants. While this must be encouraged, one must remain vigi-

lant to ensure that this potential opening of the Canadian borders becomes accessible equally to men and to women. Furthermore, immigration policies must make it possible to identify the Canadian citizens susceptible of using this potential for criminal activities and international prostitution networks. Finally, mail-order brides may be particularly at risk of being attracted to non-scrupulous consumer-husbands leading them on by marriage promises that they do not intend to fulfill, under the guise of temporary common-law or conjugal partnerships. Thus, on the one hand, the *IRPA* must not be a tool to foster the trafficking of people. On the other hand, Canada must avoid following the path of other First World countries which combat this growing phenomena by closing their frontiers to "undesired" immigrants because they are deemed less qualified and economically disadvantaged.

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<sup>2</sup>*Immigration Act*, R.S.C. 1985, c. I-2 (hereinafter *Immigration Act*).

<sup>3</sup>*Immigration and Refugee Protection*

Act, S.C. 2001, c. 27 (hereinafter *IRPA*).

<sup>4</sup>*Immigration Act*, *supra* note 2, s. 2.1.

<sup>5</sup>Christine Chun, "The Mail-Order Bride Industry: The Perpetuation of Transnational Economic Inequalities and Stereotypes" (1996) 17 U. Pa. J. Intern. Econ. L. 1155 at 1170.

<sup>6</sup>Mila Glodava and Richard Onizuka, *Mail-Order Brides: Women for Sale*, (Fort Collins, Colorado: Alaken Inc., 1994) at 47.

<sup>7</sup>Maya Raghu, "Sex Trafficking of Thai Women and the United States Asylum Law Response" (1997) 12 Geo. Immigr. L. J. 145 at 146.

<sup>8</sup>Eddy Meng, "Mail-Order Brides: Gilded Prostitution and the Legal Response" (1994) 28 U. Mich. J. L. Ref. 197 at footnote 40.

<sup>9</sup>However, some of these women will be excluded from catalogues and Web sites because of discriminatory age and beauty criteria.

<sup>10</sup>Raghu, *supra* note 7 at 146.

<sup>11</sup>Glodava and Onizuka, *supra* note 6 at 47.

<sup>12</sup>*Ibid.* at 40-42.

<sup>13</sup>Glodava and Onizuka, *supra* note 6 at 38.

<sup>14</sup>Raghu, *supra* note 7 at 146.

<sup>15</sup>Meng, *supra* note 8 at 203; and Raghu, *ibid.* at 147.

<sup>16</sup>Chun, *supra* note 5 at 1170; and Meng, *ibid.* at footnote 42.

<sup>17</sup>Raghu, *supra* note 7 at 147.

<sup>18</sup>*Ibid.* at 145.

<sup>19</sup>Meng, *supra* note 8 at 223, where the author says that in legal terms, the bride is regarded as a prostitute. The pimps, clients and consumer-husbands go unpunished, while the women are treated like criminals. See also International Organization for Migration, *Trafficking and Prostitution: The Growing Exploitation of Migrant Women from Central and Eastern Europe*, Migration Information Program, May 1995. The *IRPA* provides measures to sue Canadian citizens who have deliberately contravened to the legislation by misleading an officer on material facts or giving false declarations or informations that led to the acceptance of a person who wants to immigrate in

Canada at the time of sponsorship (see *IRPA*, *supra* note 3, s. 127 a) and b)). In theory, these measures would make it possible to sue a Canadian citizen who encourages women to immigrate to Canada by making false declarations regarding the intention to contract marriage. However, I have found no caselaw on the subject either under the new legislation nor under similar provisions of the former *Immigration Act*.

<sup>20</sup>*IRPA*, *supra* note 3.

<sup>21</sup>*Immigration and Refugee Protection Regulations*, S.O.R./2002-227.

<sup>22</sup>Several Canadian provinces also exercise their power to legislate in regard to immigration. Quebec, for example, has enacted the *Act Respecting Immigration to Quebec*, R.S.Q. c. I-O.2, and the *Regulation Respecting the Selection of Foreign Nationals*, R.R.Q. 1981, c. I-0.2, r. 5.

<sup>23</sup>See Government of Canada (September 23th 2003), online: Citizenship and Immigration Canada <<http://www.cic.gc.ca> and Donald Galloway, *Immigration Law* (Concord, Ont.: Irwin Law, 1997) at 41.

<sup>24</sup>*Immigration Act*, *supra* note 2, part VII.

<sup>25</sup>Donald Galloway, *supra* note 23 at 35.

<sup>26</sup>Under the new legislation, they could also enter the country on a common-law partner visa or a conjugal partner visa. *Immigration and Refugee Protection Regulations*, *supra* note 21 at ss. 116 and 117; *IRPA*, *supra* note 3 at 12(1). However, as mentioned earlier, at this point, men and women involved in the MOB trade are unlikely to request these visas because of their traditional and religious beliefs.

<sup>27</sup>Jeffrey A. Talpis, "Quelques considérations visant la prévention des conflits en matière de validité du mariage en droit international privé québécois et en droit de l'immigration familiale" in *Développements récents en droit de l'immigration* (Cowansville, Qc.: Yvons Blais, 1998) at 139.

<sup>28</sup>Donald Galloway, *supra* note 23 at 34-35.

<sup>29</sup>*IRPA*, *supra* note 3 at s. 3(1)d).

<sup>30</sup>See *An Act Respecting Immigration*

*to Quebec*, *supra* note 22 at s. 3(b).

<sup>31</sup>Donald Galloway, *supra* note 23 at 175.

<sup>32</sup>U.N. *Convention Relating to the Status of Refugees*, signed at Geneva, July 28, 1951 (189 U.N.T.S. 150, 1967 Protocol 606 U.N.T.S. 267 (in force in Canada September 2, 1969)).

<sup>33</sup>See *Humanitarian Designated Classes Regulation*, SOR/97-183, and the *Immigration and Refugee Protection Regulations*, *supra* note 21 at part 8.

<sup>34</sup>Donald Galloway, *supra* note 23 at 117.

<sup>35</sup>See Government of Canada, "Canada's Program Women at Risk" (September 23th 2003), online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/english/refugees/women-1.html>>.

<sup>36</sup>Donald Galloway, *supra* note 23 at 178.

<sup>37</sup>See Government of Canada, *supra* note 35.

<sup>38</sup>Audrey Macklin, "Refugee Women and the Imperative of Categories" (1995) 17 Hum. Rts. Q. 213; cited in Donald Galloway, *supra* note 23 at 178.

<sup>39</sup>*IRPA*, *supra* note 3 at s. 96. For an excellent review of the legal rules applicable to refugee status in Canada, see Donald Galloway, *supra* note 23 at chap. 9, 14 and 15.

<sup>40</sup>See Government of Canada, "Who Can Come To Canada Under The Women At Risk Program" (September 23th 2003), online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/english/refugees/women-2.html>>.

<sup>41</sup>*Immigration and Refugee Protection Regulations*, *supra* note 21 at s. 11(1) and *IRPA*, *supra* note 3 at 11(1) and 12(3).

<sup>42</sup>*IRPA*, *supra* note 3 at s. 52(1).

<sup>43</sup>*Ibid.* at s. 99(1). On this subject, see Donald Galloway, *supra* note 23 at 293-310.

<sup>44</sup>*IRPA*, *supra* note 3. at s. 25(1).

<sup>45</sup>*Immigration and Refugee Protection Regulations*, *supra* note 21 at ss. 78(2) and 102.. See Donald Galloway, *supra* note 23 at 155.

<sup>46</sup>The minister determines the mini-

mal amount of points necessary for a candidate to be admitted in the economic class. See *Immigration and Refugee Protection Regulations*, *supra* note 21 at 76(2) and 108.

<sup>47</sup>Immigrants must submit to a medical examination under section 30(1) of the *Immigration and Refugee Protection Regulations* and section 16(2) of the *IRPA*. However, according to section 38(2) *IRPA*, immigrants who are considered members of the family class, protected persons or had applied under the Convention refugee cannot be inadmissible because their health problems could amount to an excessive weight upon the social and health services.

<sup>48</sup>See *IRPA*, *supra* note 3 at ss. 34 to 37 for the inadmissibilities based on criminality.

<sup>49</sup>*Immigration Regulations, 1978*, S.O.R./78-172 at s. 2(1) (hereinafter *Immigration Regulations, 1978*). The *Regulation Respecting the Selection of Foreign Nationals*, R.R.Q. 1981, c. M-23.1, r. 2, has no definition of "spouses".

<sup>50</sup>*Ibid.*

<sup>51</sup>Jeffrey A. Talpis, *supra* note 27 at 161 and 165; Davies B.N. Bagambiire, *Canadian Immigration and Refugee Law*, (Aurora, Ont.: Canada Law Book, 1996) at 16; Donald Galloway, *supra* note 23 at 145.

<sup>52</sup>*Immigration and Refugee Protection Regulations*, *supra* note 21 at s. 1(1).

<sup>53</sup>*Ibid.*, s. 2.

<sup>54</sup>*Immigration and Refugee Protection Regulations*, *supra* note 21, in the annex *Regulatory Impact Analysis Statement* at 255, 256 and 259.

<sup>55</sup>*Ibid.* at 256 and 258.

<sup>56</sup>*Immigration and Refugee Protection Regulations*, *supra* note 21 at s. 2.

<sup>57</sup>For example, in *Canada (Minister of Employment and Immigration) v. Taggar*, [1989] 3 F.C. 576 (F.C.A.), it was held that the marriage solemnized in India did not comply with the *Hindu Marriage Act* of 1955, since the parties had never been able to prove that there existed in India a custom authorizing a woman to marry a man and his brother in succession. Since the custom was an exception to

the prohibition of the law, the marriage was declared null and void by the Canadian authorities.

<sup>58</sup>Davies B. N. Bagambiire, *supra* note 51 at 17.

<sup>59</sup>See Jeffrey A. Talpis, *supra* note 27 at 162.

<sup>60</sup>*IRPA*, *supra* note 3 at ss. 2 "permanent resident" and 46. Donald Galloway, *supra* note 23 at 113-114.

<sup>61</sup>*IRPA*, *ibid.* at s. 28 (2).

<sup>62</sup>Davies B.N. Bagambiire, *supra* note 51 at 18.

<sup>63</sup>This possibility was communicated to me in a conversation on July 21, 2000, with Marie-Hélène Paré, a social worker in a shelter for immigrant women who are victims of spousal violence (transcript of conversation in the authors' files). She explained to me that some consumer-husbands marry brides in foreign countries knowing that these marriages will not be recognized in Canadian law. They are, therefore, not married. They use this method to supply women to the prostitution rings that they operate. They keep the bride in fear of being deported since her permanent resident status depends on the validity of the marriage.

<sup>64</sup>*IRPA*, *supra* note 3 at part 3.

<sup>65</sup>See *Immigration and Refugee Protection Regulations*, *supra* note 21 at s.4 and *Immigration and Refugee Protection Regulations*, *supra* note 21, in the annex *Regulatory Impact Analysis Statement* at p. 261.

<sup>66</sup>See in particular *Horbas v. Canada (Minister of Employment and Immigration)*, [1985] 2 F.C. 359 (F.C.T.D.), in which that argument was rejected. In *Law v. Canada (Minister of Citizenship and Immigration)*, [1999] I.A.D.D. No. 322 (Immigration and Refugee Board of Canada, Immigration Appeal Division) (Q.L.) the application for a spousal visa was refused because the visa officer concluded that the marriage was one of convenience. The husband had chosen his bride through a Chinese friend who had shown him photographs of her friends in China so that he could choose a wife. The evidence showed that after corresponding for a few

months, the husband spent a week in China. He met his wife on November 20 or 21, married her on November 22, and returned to Canada on November 26. He went to visit her again in March of the following year. The wife stated that she had looked for a husband in order to be able to immigrate to Canada and sponsor her family. The fact that the bride sent photographs of herself to her cousin in Canada before the husband had expressed his desire to meet a Chinese wife was considered evidence of her intention to find a husband in Canada. The testimony of the husband and wife was contradictory and lacked credibility. The contradictions in the wife's testimony led to the conclusion that she did not intend to reside permanently with the husband.

<sup>67</sup>Davies B. N. Bagambiire, *supra* note 51 at 17.

<sup>68</sup>Jeffrey A. Talpis, *supra* note 27 at 165.

<sup>69</sup>Davies B. N. Bagambiire, *supra* note 51 at 17.

<sup>70</sup>*Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, part 1.

<sup>71</sup>*Canadian Bill of Rights*, 8-9 Eliz. II, c. 44; R.S.C. (1985), App. III.

<sup>72</sup>*Horbas v. Canada (Minister of Employment and Immigration)*, *supra* note 69.

<sup>73</sup>*Canadian Bill of Rights*, *supra* note 71 at s. 2(e); *Horbas v. Canada (Minister of Employment and Immigration)*, *ibid.* See also Davies. B. N. Bagambiire, *supra* note 51 at 18. See also *Rajpaul v. Canada (Minister of Employment and Immigration)*, [1988] 3 F.C. 157 (F.C.A.) on marriages of convenience.

<sup>74</sup>Bureau de révision de la citoyenneté et de l'immigration, file No. 97-1-1-1004, District of Montréal, decision BRI 97-042, cited in Jeffrey A. Talpis, *supra* note 27 at 170.

<sup>75</sup>The Minister based the refusal on section 19(a) of the *Regulation respecting the selection of foreign nationals*, *supra* note 49.

<sup>76</sup>*Immigration and Refugee Protection Regulations*, *supra* note 21 at ss. 5a), 117(9)a) et 125a).