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Tiger King: Alternative Polygamous Relationships Not Contemplated by Justice Bauman

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Over the past month, the world has found themselves confined to their homes, with little to do but binge TV series on streaming services. One Netflix series, *Tiger King*, seems to have grabbed the attention of viewers more than others. *Tiger King* is a true crime documentary series about the underworld of big cat breeding and the personal story of Joe Exotic, a flamboyant road side zoo keeper in a gay polygamous marriage. While *Tiger King* happens to be the exact type of sensationalized escapism that quarantined viewers are seeking, it should not be used to inform peoples' opinions about polygamous relationships.

In Canada, polygamy remains a crime, B.C. Supreme Court Chief Justice Robert Bauman ruled in the 2011 *Reference re s. 293 of Criminal Code* case. To arrive at his decision, Justice Bauman applied the Oakes test which resulted in a finding that s. 293 of the *Criminal Code*, which makes polygamy a criminal offence, violates the religious freedom of fundamentalist Mormons. However, the potential for harms against women and children was found to far outweigh that concern. As Canadian law stands now, marriage, for civil purposes, is the lawful union of two persons to the exclusion of all others.¹

While monogamous marriage can be a negative experience to some, in general and in most cases, monogamous marriage is said to bring essential private goods to the couple and important public goods to society and the state.² In his decision, Justice Bauman was in favour of preserving monogamous marriage, as he thought it to represent a pressing and substantial objective for all of the reasons that have seen the ascendance of monogamous marriage not only as the norm in the west, but a fundamental value that the law should work to protect and advance.³ Not only did Bauman defend the institution of monogamous marriage, but he condemned polygamy due to what he thought its practice to have great potential for harms.⁴

Traditional polygamous marriage, a man with multiple wives, is a practice rooted in Mormon faith. The *Book of Mormon* teaches that the marriage of one man to one woman is God's standard, except at specific periods when God has declared otherwise. Critics of polygamy in the Mormon church allege deception and coercion is often used to induce marriage, like the threat of eternal damnation of the wives if they do not consent to marriage.⁵ In the case of *Tiger King*, neither of the polygamous relationships were connected to Mormonism.

Justice Bauman's concerns of harms against and children would not be a factor in the marriage of Joe Exotic and husbands, John Finlay and Travis Maldonado. The potential harms imagined by Justice Bauman are simply not there. The husbands in this marriage might be considered more vulnerable than most but they certainly do not fall into the categories of persons thought to be most susceptible to the harms of polygamy, outlined in Bauman's decision. In alternative polygamous relationships like Joe's, The *Amicus* brief in the *Reference* case submitted that a fair assessment of s. 293's constitutionality must account for the fact there exist many polygamous relationships made up of consenting adults, which create happy, healthy and nurturing familial environments.⁶ Section 293

does not take into account marriages like Joe's, a more contemporary polygamous relationship comprised of three consenting men. The other polygamous relationship in *Tiger King* is the polygamous relationship of Doc Antle, Joe Exotic's mentor. While this relationship was not a marriage, Doc's partners were all young and somewhat impressionable women. Presumably in this case, the harms imagined by Justice Bauman may exist.

Though the creators of *Tiger King* made a spectacle out of Joe Exotic's polygamous marriage, the series did display some important tenets of the polyamory movement. First, that the fundamental value of polygamy lies in the relationships at its core.⁷ In the show, there did not seem to be any serious disadvantages or manipulation of the partners, as was considered by Justice Bauman in traditional polygamous marriage. Another important tenet of the polygamy practice is that it is sex positive and all relationships should be consensual.⁸ Joe and his husbands were consenting adults, all of whom place high value on their sexual relations. Another important element of polygamy that was showcased was that each party must know of and consent to both the possibility and reality of other relationships within the group.⁹ The husbands of the Exotic union were aware of each other, open to the relationship, and consenting at all times.

While the law in Canada imposes a universal monogamy, the polygamous relationships shown in *Tiger King* might expand viewers' preconceived notions about alternative marriage dynamics. However, it should be noted that there exists a fair share of dysfunction within the relationships on the show. Hopefully, viewers do not use *Tiger King* to inform their opinions of the efficacy or morality of alternative polygamous relationships, as the show was clearly meant for entertainment purposes.

¹ *Civil Marriage Act*, SC 2005, c 33, s 2.

² *Reference re s. 293 of the Criminal Code*, 2011 BCSC 1588, at para 228 [Reference]. ³ *Ibid* at para 411.

⁴ *Ibid*.

⁵ *Ibid* at para 105.

⁶ *Ibid* note 2 at para 655. ⁷ *Ibid* at 431.

⁸ *Ibid* at 432.

⁹ *Ibid* at 434.