



December 11, 2009

Via Email

Reference re: Constitutionality of s. 293 of Criminal Code of Canada

Dear Sirs/Mesdames:

This letter is sent pursuant to an order made December 4th, 2009 by Chief Justice Bauman of the B.C. Supreme Court. It is an invitation to apply to participate in the hearing into the constitutionality of Canada's criminal prohibition of polygamy. Application to participate is not limited to the recipients of this letter, so please feel free to distribute it to any persons who may have an interest in the proceedings.

As you may be aware, on October 22nd 2009, British Columbia's Lieutenant Governor in Council referred two questions to the B.C. Supreme Court for hearing and consideration pursuant to the *Constitutional Question Act*, R.S.B.C. 1996, c. 68, s. 1. Both questions concern s. 293 of the *Criminal Code*, the criminal prohibition against polygamy. That section reads:

293. (1) Every one who
- (a) practises or enters into or in any manner agrees or consents to practise or enter into
 - (i) any form of polygamy, or
 - (ii) any kind of conjugal union with more than one person at the same time,
- whether or not it is by law recognized as a binding form of marriage, or
- (b) celebrates, assists or is a party to a rite, ceremony, contract or consent that purports to sanction a relationship mentioned in subparagraph (a)(i) or (ii),

Ministry of
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Legal Services Branch
Constitutional and Administrative Law

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is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

- (2) Where an accused is charged with an offence under this section, no averment or proof of the method by which the alleged relationship was entered into, agreed to or consented to is necessary in the indictment or on the trial of the accused, nor is it necessary on the trial to prove that the persons who are alleged to have entered into the relationship had or intended to have sexual intercourse.

The following questions have been referred to the Court for hearing and decision:

- a. Is section 293 of the *Criminal Code of Canada* consistent with the *Canadian Charter of Rights and Freedoms*? If not, in what particular or particulars and to what extent?
- b. What are the necessary elements of the offence in section 293 of the *Criminal Code of Canada*? Without limiting this question, does section 293 require that the polygamy or conjugal union in question involved a minor, or occurred in a context of dependence, exploitation, abuse of authority, a gross imbalance of power, or undue influence?

A Reference Amicus ("friend of the Court"), Mr. George Macintosh, Q.C., has been appointed to oppose the positions taken by the Attorneys General of British Columbia and Canada. The mandate of the Amicus is as follows:

- a. To advance any argument he considers appropriate in support of the answer "no" to question (1) of the reference, and to participate fully in the hearing of this matter to that end and for the purposes of appeal;
- b. To advance any argument he considers appropriate regarding question (2), particularly arguments in opposition to, or distinct from, those advanced by the AG BC or AG Canada;
- c. To make or respond to any motions or arguments he considers appropriate and consistent with (a) and (b) or as directed by the Court.

You have been identified as a person or group that may be interested in taking part in this proceeding. Should a person or group wish to participate, the Chief Justice has directed that they, by 28 January 2010, file and deliver a Notice of Motion applying for leave to be added as a party or intervener, along with an affidavit setting out the following minimum information:

- The person or group's interest in this matter.

- If a group, a description of its membership.
- An outline of the person or group's position or anticipated argument with respect to the reference questions.
- A description of the amount and types of evidence, if any, the person or group would expect to present to the Court.
- A description of whether and to what extent the person or group would seek to participate in the hearing.

The material must be filed at the Vancouver Registry of the Supreme Court of British Columbia, 800 Smithe Street, Vancouver, BC, and delivered to each of the following:

Craig Jones
Supervising Counsel, Constitutional & Administrative Law Group
MINISTRY OF ATTORNEY GENERAL
1301-865 Hornby Street
Vancouver BC V6Z 2G3
Fax: 604-660-6797

Deborah Strachan
Senior Counsel, B.C. Regional Office
DEPARTMENT OF JUSTICE
900-840 Howe Street
Vancouver BC V6Z 2S9
Fax: 604-666-6314

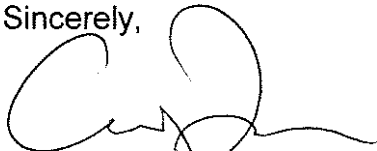
George K. Macintosh, Q.C.
Reference Amicus
FARRIS, VAUGHAN, WILLS & MURPHY LLP
2500 - 700 W Georgia Street
Vancouver BC V7Y 1B3
Fax: 604-661-9349

Should you decide to not directly participate in the proceeding, you may nevertheless wish to contact counsel for the Attorneys or the Amicus to discuss the presentation of evidence or argument through those Parties.

A copy of the Chief Justice's decision of December 4, 2009 can be accessed at the Court's website at the following address:

<http://www.courts.gov.bc.ca/jdb-txt/SC/09/16/2009BCSC1668.htm>

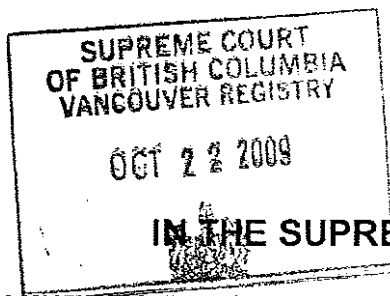
Sincerely,

A handwritten signature in black ink, appearing to read 'Craig Jones', with a stylized flourish extending to the right.

Craig Jones
Supervising Counsel
Constitutional and Administrative Law Section

CEJ:cmb

Attachment



No. S-097767
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF:

The Constitutional Question Act R.S.B.C. 1996, c. 68

AND IN THE MATTER OF:

The Canadian Charter of Rights and Freedoms


AND IN THE MATTER OF:

A Reference by the Lieutenant Governor in Council set out in Order in Council No. 553 dated October 22, 2009 concerning the constitutionality of s. 293 of the *Criminal Code of Canada* R.S.C., 1985, c. C-46

REQUISITION

REQUIRED: Initiate a proceeding in the nature of a Reference regarding the constitutionality of section 293 of the Criminal Code of Canada, pursuant to the attached Order in Council No. 553/09.

Dated: October 22, 2009



CRAIG E. JONES
Counsel for the Attorney General
of British Columbia

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Attachment.

On Notice to:

DEBORAH STRACHAN

Counsel for the Attorney General of Canada

Justice Canada

Robson Court 900 - 840 Howe Street

Vancouver BC V6Z 2S9

Tel: 604-666-1543

Fax: 604-666-6314

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No.

553

, Approved and Ordered

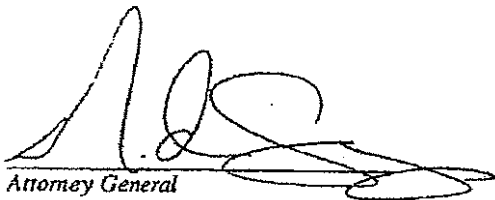
OCT 22 2009



~~Lieutenant Governor~~
Administrator

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the ~~Lieutenant Governor~~ ^{Administrator}, by and with the advice and consent of the Executive Council, orders that the questions set out in the attached Schedule be referred to the Supreme Court of British Columbia for hearing and consideration under the *Constitutional Question Act*.



Attorney General



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- *Constitutional Question Act*, R.S.B.C. 1996, c. 68, s. 1
Other (specify):-

October 21, 2009

O/857/2009/86

SCHEDULE

- 1 Is section 293 of the *Criminal Code of Canada* consistent with the *Canadian Charter of Rights and Freedoms*? If not, in what particular or particulars and to what extent?
- 2 What are the necessary elements of the offence in section 293 of the *Criminal Code of Canada*? Without limiting this question, does section 293 require that the polygamy or conjugal union in question involved a minor, or occurred in a context of dependence, exploitation, abuse of authority, a gross imbalance of power, or undue influence?

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Canada* R.S.C., 1985, c. C-46.

REQUISITION

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**CRAIG E. JONES
BARRISTER AND SOLICITOR**