



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

AMENDED NOTICE OF APPLICATION

Name of applicant: Attorney General of British Columbia

To: Attached List of Counsel

TAKE NOTICE that an application will be made by the applicant to the Honourable Chief Justice Bauman at the Courthouse at 800 Smithe Street, Vancouver, British Columbia on 25/Feb/2011 at 9:30 AM for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An order granting the AGBC leave to introduce evidence in the form of (a) an affidavit from a Texas official (the "Texas Affidavit") attaching documents of the Fundamentalist Church of Jesus Christ of Latter-day Saints concerning nine persons reportedly "married" to or by FLDS Prophet Warren Jeffs in 2004, 2005 and 2006 (described below as Child A, Child B, Child C, Child D, Child E, Child F, Child G, Child H and Child I); and (b) a second affidavit attaching copies of the Exhibits to the Texas Affidavit that have been redacted to remove any identifying information regarding Child A, Child B, Child C, Child D, Child E, Child F, Child G, Child H and Child I.
2. An order granting the AGBC leave to introduce into evidence certified copies of the birth registration records of Child A, Child B, Child C, Child D, Child E, Child G, Child H, and Child I on file with the British Columbia Vital Statistics Agency ("Birth Records").
3. With respect to the certified copies of the eight birth registration records, an order that:

- a. the certified copies be permanently sealed and not form part of the public record, with access to be permitted to participants in the proceeding only as provided in subparagraphs 3(b) and (c) below;
- b. the following named counsel for the Amicus Curiae and the Attorney General of Canada be entitled to receive from the AGBC unredacted copies of the birth registration records (the "Unredacted Copies"), upon the AGBC's receipt from them of the undertakings specified in subparagraph 3(c):
 - i. George K. Macintosh, Q.C., Ludmila B. Herbst, and Timothy A. Dickson, for the Amicus Curiae; and
 - ii. R. Keith Reimer, BJ Wray, Craig Cameron, and Robert Danay, for the Attorney General of Canada

(the "Named Party Counsel")

but no Interested Person or its counsel shall be entitled to receive such Unredacted Copies; and

- c. prior to distribution of the Unredacted Copies to a given Named Party Counsel, that Named Party Counsel must provide a written undertaking to the AGBC that he or she:
 - i. will use the Unredacted Copies only for the purpose of this proceeding;
 - ii. will not show, or otherwise communicate the contents of, the Unredacted Copies to any other person, save another Named Party Counsel who has provided the necessary undertaking of confidentiality to the AGBC;
 - iii. will not refer to the Unredacted Copies in public in a manner that would reveal any personal information contained in them;
 - iv. will not make paper or electronic copies of, or otherwise transcribe the personal information contained in, the Unredacted Copies;
 - v. will, if among a group of counsel for the same party and having custody of the Unredacted Copies, secure the Unredacted Copies at his or her place of work in a manner that ensures they are not accessible to any other person, save another Named Party Counsel who has provided the necessary undertaking of confidentiality to the AGBC;
 - vi. will promptly report to the AGBC any breach of subparagraphs 3(c)(i)-(v);
 - vii. will destroy the Unredacted Copies within 35 days of the resolution of all appeals or, if no appeals are commenced, 35 days of the expiry of the applicable appeal periods, or in any event within 35 days of ceasing to be counsel in this proceeding; and

viii. within 10 days of the expiration of the time limit set out in subparagraph 3(c)(vii), will confirm in writing to the AGBC that he or she has destroyed the Unredacted Copies in his or her possession in accordance with subparagraph 3(c)(vii).

4. With respect to the Texas Affidavit, an order that:

- a. the Exhibits to the Affidavit, containing unredacted copies of the FLDS Church records, be permanently sealed and not form part of the public record, with access to be permitted to participants in the proceeding only as provided in subparagraphs 4(b) and (c) below;
- b. the following named counsel for participants in the proceeding be entitled to receive from the AGBC unredacted copies of the Exhibits, upon the AGBC's receipt from them of the undertakings specified in subparagraph 4(c):

- i. George K. Macintosh, Q.C., Ludmila B. Herbst, and Timothy A. Dickson, for the Amicus Curiae;
- ii. R. Keith Reimer, BJ Wray, Craig Cameron, and Robert Danay, for the Attorney General of Canada;
- iii. Robert V. Wickett, for James Oler and the Fundamentalist Church of Jesus Christ of Latter Day Saints.

(the "Named Participant Counsel")

- c. prior to distribution of the Exhibits to a given Named Participant Counsel, that Named Participant Counsel must provide a written undertaking to the AGBC that he or she:
 - i. will use the Exhibits only for the purpose of this proceeding;
 - ii. will not show, or otherwise communicate the contents of, the Exhibits to any other person including his or her client, save another Named Participant Counsel who has provided the necessary undertaking of confidentiality to the AGBC;
 - iii. will not refer to the Exhibits in public in a manner that would reveal any personal information contained in them;
 - iv. will not make paper or electronic copies of, or otherwise transcribe the personal information contained in, the Exhibits;
 - v. will, if among a group of counsel for the same participant and having custody of the Exhibits, secure the Exhibits at his or her place of work in a manner that ensures they are not accessible to any other person, save another Named Participant Counsel who has provided the necessary undertaking of confidentiality to the AGBC;

- vi. will promptly report to the AGBC any breach of subparagraphs 4(c)(i)-(v);
 - vii. will destroy the Exhibits within 35 days of the resolution of all appeals or, if no appeals are commenced, 35 days of the expiry of the applicable appeal periods, or in any event within 35 days of ceasing to be counsel in this proceeding; and
 - viii. within 10 days of the expiration of the time limit set out in subparagraph 4(c)(vii), will confirm in writing to the AGBC that he or she has destroyed the Exhibits in his or her possession in accordance with subparagraph 4(c)(vii).
5. For greater certainty, the Chief Justice is seized of any disputes arising under paragraphs 3 or 4 of this order.

Part 2: FACTUAL BASIS

1. The AGBC has become aware of facts that he considers relevant and important to the issues in the reference. In particular:

In 2004, a then 13-year-old female from the Bountiful community (Child A) was “celestially married” “for time and eternity” to FLDS Prophet Warren Jeffs, by “Patriarch Leroy S. Jeffs as mouth”, at the home of James Allred in Colorado City, Arizona. Child A’s father and mother participated in the “wedding” ceremony.

On the same day in 2004, two 17-year-old females from Bountiful (Child D and Child E) were “married” by the Prophet Warren Jeffs to other men. Child D and Child E were personally delivered to Warren Jeffs by James Oler, Bishop of the FLDS at Bountiful, who witnessed the ceremony.

Also on the same day, a 16-year-old girl from the United States (Child F) was “married” to a Bountiful man by the Prophet Warren Jeffs. Child F is one of the teenage girls recorded (in material already before the Court) as having given birth in Canada some time later, while still a minor. James Oler was present at the ceremony.

In 2005, a then 12-year-old female from the Bountiful community (Child B) was “celestially married” to FLDS Prophet Warren Jeffs in the United States. Child B’s father drove her to Short Creek, accompanied by Child B’s mother, for the purpose of the “marriage”. She was then driven to Texas by an FLDS official.

Also in 2005, a then 12-year-old female from the Bountiful community (Child C), was “celestially married” to FLDS Prophet Warren Jeffs in the United States. Child C’s father drove her to Short Creek, for the purpose of the “marriage”. She was then driven to Texas by an FLDS official.

Child G, Child H and Child I were celestially married on April 26, 2006 when they were 17 and 18 years old.

2. The facts of Child B and Child C became known to the Attorney General on February 11, 2011. Some of the facts with respect to Child A were previously known by the government, and were recovered by counsel for the Attorney General on February 11 through a review of related government files and further enquiries of Texas authorities.

3. The facts of Child D, Child E, and Child F became known to the Attorney General on February 21 and 22nd, 2011, through a review of the relevant church records from Texas received on that day.

4. The facts in relation to Child G, Child H and Child I became known to the Attorney General on February 22-23, 2011.

5. The evidence that the Attorney seeks to introduce will be in the form of an affidavit appending church records of the FLDS that were seized by Texas authorities during the search and rescue operation at the Yearning for Zion ranch near El Dorado, Texas in 2008, and in the form of birth registration records on file with the British Columbia Vital Statistics Agency. The church records in question are "marriage records", "personal records", and "Records of the President Warren Jeffs", which are a series of transcribed dictations by Warren Jeffs in his capacity as President of the FLDS.

6. According to paragraph 6 of Chief Justice Bauman's February 16, 2010 case management order, no further evidence may be introduced in this proceeding, past the stipulated evidentiary deadlines, without leave of the Court.

7. The evidence at issue contains the sensitive personal information of a number of individuals, two of whom are still children. All nine of the children may have been victims of serious crimes.

8. Accordingly, the AGBC seeks sealing and confidentiality orders. The AGBC is prepared to introduce this evidence only if the sealing and confidentiality orders are granted.

Part 3: LEGAL BASIS

1. The AGBC relies on:

- a. s. 41 of the *Vital Statistics Act*, R.S.B.C. 1996, c. 479;
- b. s. 42 of the *Evidence Act*, R.S.B.C. 1996 c. 124;
- c. the inherent jurisdiction of this Honourable Court; and
- d. such further and other material as counsel may advise and this Honourable Court may allow.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #5 of Kaley Isbister, sworn February 17, 2011;
2. Affidavit #3 of Leah Greathead, sworn February 23, 2011;
3. case management order made by Chief Justice Bauman on February 16, 2010; and
4. such further and other materials as counsel may advise and this Honourable Court may allow.

The applicant estimates that the application will take 2 hours.

This matter is within the jurisdiction of a master.

This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on the person,
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: February 23, 2011



 applicant lawyer for applicant
Craig Jones

This NOTICE OF APPLICATION is prepared by Craig Jones, Barrister & Solicitor, of the Ministry of Attorney General, whose place of business and address for service is 1301 - 865 Hornby Street, Vancouver, British Columbia, V6Z 2G3; Telephone: (604) 660-3093; Facsimile: (604) 660-6797; Email Address: Craig.Jones@gov.bc.ca.

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this notice of application

with the following variations and additional terms:

.....
.....
.....

Date:[dd/mmm/yyyy].....

Signature of Judge Master

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

[Check the box(es) below for the application type(s) included in this application.]

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- other