



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

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 three persons reportedly "married" to FLDS Prophet Warren Jeffs in 2004 and 2005 (described below as Child A, Child B, and Child C); 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, and Child C.
2. An order granting the AGBC leave to introduce into evidence certified copies of the birth registration records of Child A, Child B, and Child C, on file with the British Columbia Vital Statistics Agency ("Birth Records").
3. With respect to the certified copies of the three 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.
- 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:

(the "Named Participant Counsel")

- 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.

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.

2. The facts of Child B and Child C became known to the Attorney General on February 10, 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 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.

4. 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.

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

6. 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. case management order made by Chief Justice Bauman on February 16, 2010; and
3. 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.

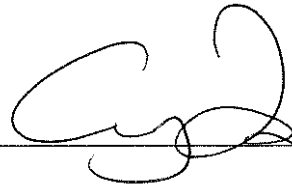
This matter is not within the jurisdiction of a master.

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 18, 2011**



Signature of
 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

MAILING DISTRIBUTION LIST – Reference re: Constitutionality of s. 293 Criminal Code of Canada (“Polygamy Reference”)

	Party	Counsel/Address
	AGBC	Craig Jones Ministry of Attorney General 1301 – 865 Hornby Street Vancouver BC V6Z 2G3
	AG Cda	Deborah Strachan, Counsel Department of Justice Canada 900 – 840 Howe Street Vancouver BC V6Z 2S9
	Amicus	George K. Macintosh, Q.C. Farris, Vaughan Wills & Murphy LLP 2500 – 700 West Georgia Street PO Box 10026 Pacific Centre Vancouver BC V7Y 1B3
	Stop Polygamy in Canada SPC	Brian Samuels Samuels & Co. #1400 – 1125 Howe Street Vancouver BC V6Z 2K8
	West Coast Legal Action Fund	Kasari Govender West Coast LEAF 555 – 409 Granville St Vancouver BC V6C 1T2
	Canadian Association for Free Expression CAFE	Douglas Christie 810 Courtney Street Victoria BC V8W 1C4
	British Columbia Teachers' Federation BCTF	Morgan Rea/Robyn Trask Hastings Labour Law Office 1100 – 675 W. Hastings St. Vancouver BC V6B 1N2

<p>James Oler and the Fundamentalist Church of Jesus Christ and the Latter Day Saints ("FLDS")</p> <p>Oler/FLDS</p>	<p>Robert Wickett Mackenzie Fujisawa LLP 1600 – 1095 W. Pender St. Vancouver BC V6E 2M6</p>
<p>BC Civil Liberties Association</p> <p>BCCLA</p>	<p>Monique Pongracic-Speier Ethos Law Group LLP 1124 – 470 Granville Street Vancouver, BC V6C 1V5</p>
<p>REAL Women of Canada</p> <p>REAL WC</p>	<p>Jonathan Baker Baker & Baker 17th Floor, 808 Nelson St Vancouver BC V6Z 2H2</p>
<p>Christian Legal Fellowship</p> <p>CLF</p>	<p>Gerald D. Chipeur Q.C. Miller Thomson LLP 3000, 700 – 9th Ave SW Calgary AB T2P 3V4</p>
<p>Canadian Polyamory Advocacy Association</p> <p>CPA</p>	<p>John G. Ince Director 1204A 2050 Nelson St Vancouver BC V6G 1N6</p>
<p>Beyond Borders – Ensuring Global Justice for Children</p> <p>Beyond Borders</p>	<p>David Matas 602 – 225 Vaughan St. Winnipeg MB R3C 1T7</p>
<p>Canadian Coalition for the Rights of Children & David Asper Centre for Constitutional Rights</p> <p>CCRC</p>	<p>Brent Olthuis Hunter Litigation Chambers 2100 – 1040 W. Georgia St. Vancouver BC V6E 4H1</p>