



Affidavit #5 of Kaley Isbister
Sworn February 18, 2010

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

AFFIDAVIT

I Kaley Isbister, civil servant, of Vancouver, British Columbia, MAKE OATH AND
SAY AS FOLLOWS:

1. I am legal secretary to Craig Jones and Sarah Bevan, counsel for the Attorney General of British Columbia in the present proceedings, and as such I have personal knowledge of the matters attested to herein, except where based on information and belief, where I will state this to be so.
2. In October and November 2010 Mr. Jones exchanged emails with Mr. Wickett, counsel for the FLDS, with a view to accessing FLDS records. A copy of that correspondence is attached as **Exhibit "A"** to this Affidavit.
4. On February 10 and 11, 2011 Ms. Leah Greathead, a lawyer working with Mr. Jones, had correspondence with Mr. Eric Nichols regarding two 12-year old girls from Bountiful reportedly "married" to Warren Jeffs in 2005. Mr. Jones informs me, and I

Jones, Craig E AG:EX

From: Robert Wickett [rwickett@maclaw.bc.ca]
Sent: Friday, November 5, 2010 4:46 PM
To: Jones, Craig E AG:EX
Cc: George Macintosh; Ludmila Herbst; Tim Dickson
Subject: RE: Request for FLDS Marriage and Demographic Data

Craig

The marriage records do not reflect ages, unless there is something I am missing. I've seen a sampling that were disclosed in the Oler criminal case and there are no indications of anything other than the names, date of marriage and the witnesses. The flds is involved in litigation with respect to these records and it cannot and does not consent to the transfer of these records to this, or any other jurisdiction. There are no marriage records in Bountiful.

In respect of the head count of people in Bountiful I am instructed as follows, keeping in mind this was a head count and so it is approximate in the sense that E and OE;

Total residents who are members of FLDS 548

pre school age children 114 roughly
 children in school 251
 home schooled children a few

married persons 115
 unmarried persons 18 or older 55 (22 females and 33 males)
 17 year olds (all unmarried) 8 (7 females and 1 males)
 16 year olds (all unmarried) 14 (9 females and 5 males)

married persons living in monogamy 60
 married persons living in polygamy 55

of those in polygamy; family of 3 27
 of those in polygamy; family of 4 16
 of those in polygamy; family 5 or more 12

the largest polygamist family is a family of 6

there are 8 single mothers, 1 single father and 4 unmarried widows.

If I learn that there are errors to be corrected, I will let you know.

Anything arising, let me know.

Bob

This is Exhibit "A" referred to in the
 affidavit of Kaley Isbister
 Sworn before me at Vancouver
 in the Province of British Columbia, this
 18th day of February, 2011.
 A Commissioner for taking Affidavits
 within the Province of British Columbia

Robert Wickett
 MACKENZIE FUJISAWA LLP
 Barristers and Solicitors
 1600 - 1095 West Pender Street
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From: Jones, Craig E AG:EX [mailto:Craig.Jones@gov.bc.ca]
Sent: Monday, October 25, 2010 9:55 AM
To: Robert Wickett
Subject: RE: Request for FLDS Marriage and Demographic Data

Thanks for your response.

With respect to the US records that exist but have been seized, would the FLDS consent to our obtaining copies from the Texas authorities if this is possible? My understanding is that their records may in fact be sufficient to establish the ages of the participants in any given marriage.

On the Bountiful statistics, I appreciate your efforts and will look forward to a response. Time is obviously of the essence if we expect to get the figures to our experts in time to give you and the Amicus a picture of what they will say about them, if anything.

The question of Mr. Oler's and Mr. Palmer's personal lives is difficult.

We do not accept that the scope of cross examination of any witness is limited to their affidavit. The Chief Judge's order was aimed, on your urging, to protect affiants and their families from future prosecution by being revealed to be in criminally polygamous relationships. It did not draw the dividing line at an affiant's "personal life" per se.

So it might be would be in keeping with the spirit of the Chief's order that neither Mr. Oler nor Mr. Palmer would be 'outed' as polygamists, although it is of course a notorious fact that they are. Nevertheless we could agree that they should not have to provide evidence of their own polygamy per se, nor would they have to reveal the identities of their wives, even though these are, of course, well known.

We would, however, reserve the right to ask any witness any other questions that might assist the Court in assessing the allegations of harms in Bountiful and other FLDS communities. Both Mssrs Oler and Palmer are expected to have a great deal of information regarding the sexual targeting of girls by older men at Bountiful and throughout the FLDS. Short of identifying any person as a polygamist, we do not believe there is any bar to eliciting information on this from the witnesses.

It might be that we could deal with this through admissions, or conceivably that the 'counting heads' you propose might satisfy the Court's need for the fullest information on these issues. But we do not accept that, having submitted the

affidavit and committed themselves to cross-examination, the witnesses can refuse to answer questions that are relevant and do not expose any person as a polygamist.

I hope this is helpful.

Craig Jones
Constitutional & Administrative Law Group
MINISTRY OF ATTORNEY GENERAL

From: Robert Wickett [mailto:rwickett@maclaw.bc.ca]
Sent: Monday, October 25, 2010 8:39 AM
To: Jones, Craig E AG:EX
Subject: RE: Request for FLDS Marriage and Demographic Data

Craig

The FLDS will not, and cannot comply with your request so far as it relates to the communities in the United States. The discussion of relevance is immaterial because the records you seek do not exist. The FLDS does maintain records of marriage but those records were, as you know, seized by the authorities in Texas.

In any event, the marriage records do not record the ages of those married, nor whether the marriage is monogamous or polygamous.

There are no other records of which I am aware that would answer the questions you pose.

With respect to the community in Bountiful I agree that much of the information you seek would be relevant although there are no existing records which would answer your questions directly. However, the community is small enough that it is possible to count heads, so to speak. I'm gathering information which will answer as many of your questions as possible and I'll pass it on to you when available.

On another matter, I have previously raised with you the issue of Jim Oler's evidence. I expect that he will testify but as he has elected to testify without anonymity we will require the further assurance reflected in a court order that he will not be asked questions about his personal life. He has not testified as to these matters in his affidavit but his evidence is important on other issues relevant to his position as bishop of the community.

What is your position on this? This is a matter I will want to address at the next pre hearing conference.

Regards
Bob

Robert Wickett
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From: Jones, Craig E AG:EX [mailto:Craig.Jones@gov.bc.ca]

Sent: Tuesday, October 19, 2010 9:33 AM

To: Robert Wickett

Cc: Strachan, Deborah; BJ Wray; Craig Cameron; Reimer, Keith; Bevan, Sarah AG:EX; Greathead, Leah R AG:EX; Horsman, Karen AG:EX; George Macintosh; Tim Dickson; Ludmila Herbst; Walters, Jean M AG:EX; Zaltz, Freya AG:EX; Jones, Craig E AG:EX

Subject: Request for FLDS Marriage and Demographic Data

Importance: High

Bob, further to our conversation last week and the recent receipt of your affidavit evidence, I wanted to let you know more precisely what we expect Mr. Oler and the FLDS to provide in anticipation of his cross-examination and that of other witnesses. We have framed this request so as to not reveal any information of the sort addressed by the Chief Justice's confidentiality order; if you believe that providing the information would reveal such information please let me know immediately and we can come to an accommodation.

If we cannot come to an agreement about the provision of this information we will seek an order at the earliest opportunity, but in any event not later than the next CPC on November 5.

Demographic information from FLDS communities: We would like to know the population of Bountiful and other FLDS communities (that is, FLDS members currently resident in those communities), broken down into numbers of adult men (19 and over), adult women, male children (18 and under); female children (18 and under). If a more concise breakdown is possible, we would like that too. This is relevant to the central issue of gender balance/imbalance in polygamous communities and societies; it may also provide a useful framework for other demographic and sociological analyses.

Marriage information: we would like to know, for the last 20 years at least, information from Bountiful and other FLDS communities regarding marriage. For each marriage (legal, celestial, or any other form acknowledged or recorded by the FLDS), we would like to know (a) the age of the bride; (b) the age of the groom; and (c) the form of the marriage (eg legal, celestial, etc.); and (d) the year of the marriage (precise date not necessary). We recognize that any records you provide may be shorn of personal identifiers, and we specifically do not ask that you identify whether any of the marriages was or is polygamous. This is relevant to the central issue of whether polygamous societies have younger brides and greater age disparity between husbands and wives than monogamous societies. It is also relevant to assertions made by the Amicus's experts and other witnesses that the practice of teen marriage is diminishing in Bountiful and other FLDS communities.

Information on the prevalence of polygamy: We would like to know how many polygamous relationships there are in Bountiful and other FLDS communities. We think it should be possible for you to break this down by category anonymously – ie. The number of men in Bountiful with two wives; the number with three; the number with four or more, and so on. If you believe that some of this information might indirectly tend to reveal identities, we are open to more broad classification (i.e. 2 wives, 3 wives, 4 or more wives). We would also like the numbers of persons in monogamous marriages (legal and otherwise). This is relevant to a number of issues including the scope of any s.2 infringement, the question of pressing and substantial concern, the balancing of salutary and deleterious effects of prohibition, etc, as well as to the demographic and behaviourist arguments advanced by the AGBC.

Information on reports of criminal offences: Please provide details of the reports that were made to the police and are referred to in Mr. Oler's Affidavit #3 at para. 14. As you probably know, this is relevant to the Amicus's request of the AGBC for information regarding any criminal investigations and charges, and will assist us in providing that information. It would be easier to provide this information to us confidentially in advance (so that we can incorporate it, without personal information, in our answers to the Amicus's queries) rather than have us attempt to elicit it through cross-examination. More broadly, it may also be relevant to arguments surrounding the incidents of deviant behaviour in polygamous communities.

Please let me know your position on these requests at your earliest convenience. I am in my Victoria office today if you would like to discuss on the phone.

Best regards,

Craig.

CRAIG JONES

Supervising Counsel, Constitutional & Administrative Law Group
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This is Exhibit " B " referred to in the
 affidavit of Kaley Isbister
 Sworn before me at Vancouver
 in the Province of British Columbia, this
 18th day of February, 20 11.

 A Commissioner for taking Affidavits
 within the Province of British Columbia

From: Eric Nichols [<mailto:ENICHOLS@brsfirm.com>]
 Sent: Friday, February 11, 2011 07:39 AM
 To: Greathead, Leah R AG:EX
 Cc: Ross, Eva L C AG:EX
 Subject: RE: Request for help in tracking down birth certificates

We have found records indicating that each was placed in a "spiritual" or "celestial" "marriage" to Warren Jeffs on 12/16/2005, with the "marriages" occurring at the YFZ Ranch. They were both obviously 12 years old at the date of the "marriages." They were driven down from Canada to Short Creek earlier that month by their fathers ([REDACTED] father [REDACTED], and [REDACTED] father [REDACTED]) after Warren Jeffs notified these men that the girls would be "sealed" to him. [REDACTED] mother [REDACTED] also made the trip from Canada to Short Creek. The girls were then transported from Short Creek to Texas by FLDS operative John Wayman.

Eric

-----Original Message-----

From: Greathead, Leah R AG:EX [<mailto:Leah.Greathead@gov.bc.ca>]
 Sent: Thursday, February 10, 2011 8:25 PM
 To: Eric Nichols
 Cc: Ross, Eva L C AG:EX
 Subject: RE: Request for help in tracking down birth certificates

Hi Eric,

Further to my last e-mail I do have a question about the named girls. Is the allegation that they have been married to Warren Jeffs and if so, when does Texas say they were married to him.

Thanks

Leah

From: Eric Nichols [<mailto:ENICHOLS@brsfirm.com>]
 Sent: Thu 10/02/2011 4:46 PM
 To: Greathead, Leah R AG:EX; Ross, Eva L C AG:EX
 Subject: Request for help in tracking down birth certificates

Hello to you both.

First, I have been following your case as much as I can over the Internet and it looks from here like you all are doing a great job.

Second, I need to let you know that I have left the Texas Attorney General's Office. I am continuing to serve as a prosecutor on the YFZ Ranch cases, and so want to get you my new contact information. This is my new email, and I will send you both an email soon with all of my new contact info.

Third, as we are getting ready for the trial of Warren Jeffs, I need to ask a favor. I would like to ask for your help in tracking down public birth records (if they exist) for two of our victims:

████████████████████ DOB ██████████/1993

████████████████████ DOB ██████████/1993

Both of these girls were born in the Bountiful community.

If possible, we would like to obtain a certified birth certificate for each girl, along with an apostille for each record so that we could admit them into evidence under our Texas self-authentication rules.

Also, I imagine it is too late for you to use this information in your case, but let me know if you would have an interest. I know you asked me a long time ago about girls who were taken from Canada to Texas, and we have discovered these two.

Let me know when you can whether you might be able to help us on this. Thanks in advance.

Eric Nichols



TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

COMMISSIONER
Carey D. Cokerell

June 27, 2008

Wendy Wiens
Team Leader
MCFD Creston (AFG)
Fax: (250) 428-3297

This is Exhibit " C " referred to in the
affidavit of Kaley Isbister.....
Sworn before me at Vancouver.....
in the Province of British Columbia, this
18th day of February, 2011.
.....
A Commissioner for taking Affidavits
within the Province of British Columbia

Ms. Wiens,

As part of our investigation, we have collected a large amount of written documents that provide information regarding marriages of underage females to adult males.

The following is an excerpt from about 5 1/2 pages of said document (pages 87-92) labeled "Record of President Warren Jeffs". These pages are dated Tuesday, March 2, 2004 and note "9:40 a.m. Dictation". This excerpt is located on page 89:

"I sat down with [redacted] and his wife and his daughter, gave a training on the redemption of Zion in brief, in summary, and this girl was called on a mission; and they received it joyfully. And there [redacted], age thirteen, was sealed to Warren Steed Jeffs for time and all eternity..."

Should you have any further questions you can contact me at the number listed below.

Sincerely,
Angie Voss
Angie Voss
CPS Supervisor
San Angelo, Texas
(325) 857-7433

Marriage Record

Husband: Warren Steed Jeffs		Father: Rudon Timpson Jeffs	
Wife: [REDACTED]		Mother: Marilyn Steed Jeffs	
Date: March 1, 2004		Location: Home of James Allred - Colorado City, Arizona	
Witnesses: James Allred [REDACTED]		Duration: Time and Electricity	
Marriage Performed By: Patriarch LeRoy S. Jeffs as mouth			

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

AFFIDAVIT

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**Craig Jones
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