

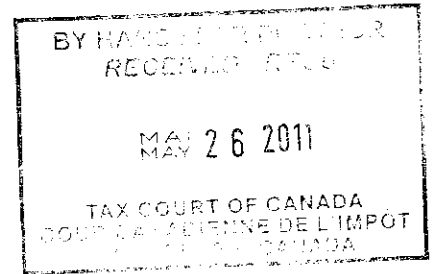
NOTICE OF MOTION

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TAX COURT OF CANADA

BETWEEN:

WINSTON BLACKMORE



Applicant

and

HER MAJESTY THE QUEEN

Respondent

NOTICE OF MOTION

TAKE NOTICE THAT the Applicant will make a motion to the Court at a date and time to be determined by Mr. Justice Miller.

THE MOTION IS FOR an Order pursuant to Rule 12 of the *Tax Court of Canada Rules (General Procedure)* (the "Rules") abridging the time for service of Motion materials upon the Respondent, and Orders pursuant to the Court's inherent jurisdiction over its own process:

1. restricting the publication of any evidence of any witness for the Appellant in the trial of this matter relating to polygamy, plural marriage, "celestial marriage" (as it is sometimes referred to) or similar practices, including any evidence given on examination for discovery or in response to undertakings; and
2. directing that the Respondent not use nor make available to any person or entity for the purposes of prosecution under section 293 of the *Criminal Code* (or any successor provision resulting from the *Reference re Criminal Code, s. 293* currently before the Supreme Court of British Columbia) any evidence of any witness for the Appellant in the trial of this matter relating to polygamy, plural marriage, celestial marriage or similar practices;

and, in the alternative should either of the preceding Orders not be granted, for an Order adjourning the hearing of this matter *sine die*.

THE GROUNDS FOR THESE MOTIONS ARE:

1. The Applicant, who is the Appellant in this matter, is a member of the community of fundamentalist Mormons who reside in an area known as "Bountiful" British Columbia.

2. The community of Bountiful has been the subject of police investigations in relation to the alleged practice of polygamy since 1990.
3. In 2008, after a lengthy charge-approval process involving the appointment of multiple special prosecutors and numerous legal opinions on the constitutionality of section 293 of the *Criminal Code*, the Applicant and Mr. James Oler (also of Bountiful) were charged with practicing polygamy contrary to paragraph 293(1)(a) of the *Criminal Code*.
4. The criminal charges against the Applicant and Mr. Oler were stayed when the Supreme Court of British Columbia (“BCSC”) found improprieties in the charge approval process and quashed the charge approval: attached hereto is a copy of the judgment in *Blackmore v. British Columbia (Attorney General)* 2009 BCSC 1299. As a result, the constitutionality of section 293 of the *Criminal Code* was referred to the BCSC for determination (the “Polygamy Reference”).
5. Members and ex-members of the Bountiful community, and other current or former fundamentalist Mormons, gave evidence in the Polygamy Reference as Interested Persons (the “Reference Witnesses”).
6. On September 24, 2010, the BCSC granted a request by the Fundamentalist Church of Jesus Christ of Latter-Day Saints (the “FLDS”) to permit Reference Witnesses to testify using pseudonyms and behind screens and to restrict the scope of questioning of the Reference Witnesses to exclude identifying information (the “Reference Anonymity Order”). Attached hereto is a copy of the judgment in *Reference re Criminal Code, s. 293*, 2010 BCSC 1351.
7. The Reference Anonymity Order was issued for the purposes of ensuring that the Reference Witnesses would be willing to testify on the basis that their evidence could not be used in criminal proceedings against fundamentalist Mormons in Canada and the United States of America.
8. The Applicant applied for Party status in the Polygamy Reference. His application was denied and he did not personally participate in the Polygamy Reference.
9. The Applicant and the other proposed witnesses for the Appellant who are members of the Bountiful community (the “Witnesses”), fear that if the BCSC or an appellate court finds section 293 of the *Criminal Code* to be constitutional, or that if section 293 of the *Criminal Code* is interpreted or rewritten so as to permit criminal charges to be laid against members of Bountiful community, the Witnesses’ evidence in this proceeding, to the extent it relates to the practice of polygamy, plural marriage or celestial marriage, will:
  - a. be used against the Witnesses or their family members or other Bountiful community members in criminal proceedings relating to polygamy; and
  - b. be reported in print, internet and other media and, should charges be laid against any member of the Bountiful community and should the matter proceed to criminal trial(s), thereby adversely affect the fairness of the criminal trial(s).

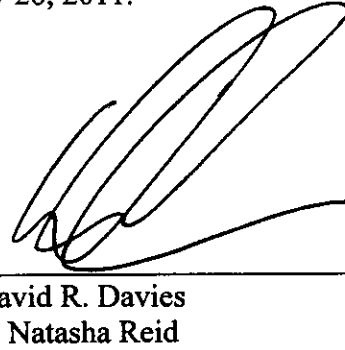
10. The Witnesses' fears are reasonable and well-grounded in fact, in the light of the history of law enforcement and prosecutorial activities targeting Bountiful and the criminal charges of polygamy brought against the Appellant (and Mr. Oler).
11. The issues in the Appellant's appeal include whether the members of Bountiful lived and worked together in the taxation years under appeal and whether the Bountiful congregation is part of a religious organization. Evidence relating to the living arrangements of Bountiful community members and evidence identifying the religious organization to which the Bountiful congregation belongs, including characteristic doctrines, is therefore relevant to the issues in the appeal.
12. The Crown has served notice on the Appellant that it intends to read in discovery evidence, including evidence relating to plural marriage.
13. Due to the special nature of income tax assessments, the Crown in a Tax Court appeal has the advantage of relying on assumptions of fact, which are presumed by the Court to be true unless the Appellant/taxpayer brings evidence to demolish those assumptions. The Respondent in this matter has pleaded assumptions related to plural marriage and raised arguments related to plural marriage in its Reply to the Further Further Amended Notice of Appeal, as follows:
  - a. The Appellant practiced polygamy or "celestial marriages" and had numerous purported "wives" and many children from those relationships (assumption pleaded at paragraph 31(a));
  - b. Not all members of the community of Bountiful live and work together (assumption pleaded at paragraphs 31(hh) and 31(ii) and argument raised at paragraph 40);
  - c. The Bountiful community is not a constituent part of any religious organization (argument raised at paragraph 41);
  - d. The Bountiful community neither adheres to the practices and beliefs of, nor operates according to the principles of any religious organization (argument raised at paragraph 42); and
  - e. Given the polygamous nature of the purported congregation's familial arrangements, any allocation of trust income to families on this basis would be contrary to the intention of Parliament... (argument raised at paragraph 52).
14. The Appellant's case is the precedential case for the appropriate tax treatment of the Bountiful congregation. The outcome of the Appellant's appeal will affect all members of the congregation. The Appellant is thereby practically compelled to testify and to call other witnesses from Bountiful or with first-hand knowledge of Bountiful during the relevant years in order to provide direct evidence of the living arrangements in Bountiful and of the congregation's religious characteristics and affiliations. In short, the evidence of the Witnesses is crucial to the Appellant's case, yet absent the Orders sought, the Witnesses' choice is to incriminate themselves or concede the assessments under appeal.

15. The Applicant wishes to challenge the assessments under appeal but does not wish to incriminate himself.
16. Other Witnesses have indicated that they are not willing to testify if their evidence relating to living arrangements in Bountiful may be reported and used against them or other members of Bountiful in subsequent criminal proceedings.
17. The *Charter of Rights and Freedoms* (the "*Charter*") does not guarantee protection or sufficient protection for the Witnesses against the use or derivative use of their evidence against themselves or other members of the Bountiful community in subsequent criminal proceedings.
18. The Respondent's objection to the Orders underscores the need for the requested Orders.
19. The relief sought does not prejudice the Respondent, as the Respondent's conduct of its case in the Tax Court will not be affected.
20. The relief sought minimally impairs the *Charter* protected interests of the public in Court proceedings being open to public scrutiny. Any interested members of the public, including the media, will still be permitted to observe the proceedings and evidence not relating to the polygamous aspects of the Bountiful community will be reportable.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The affidavit of Winston K. Blackmore sworn May 26, 2011.

Dated this 26<sup>th</sup> day of May, 2011.



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TO: Her Majesty in Right of Canada  
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