

No. S-097767
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF:

THE *CONSTITUTIONAL QUESTION ACT*, R.S.B.C. 1986, 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. 533 DATED OCTOBER 22, 2009 CONCERNING
THE CONSTITUTIONALITY OF s. 293 OF THE *CRIMINAL CODE OF CANADA*,
R.S.C. 1985, c. C-46


AFFIDAVIT OF TIMOTHY DUNFIELD

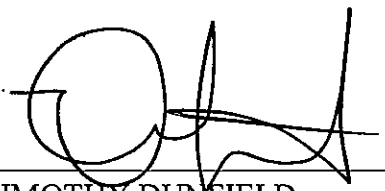
I, TIMOTHY DUNFIELD, of the City of Edmonton, in the Province of Alberta, MAKE OATH
AND SAY:

1. I am a PhD student at the University of Alberta in the Department of Religious Studies. I have been retained by the Christian Legal Fellowship to prepare an expert report to explain the effects polygamy has on young and adult males who grow up in polygamous communities. I have been retained for the purpose of providing information to the Supreme Court of British Columbia in this Reference.
2. I understand that in providing my opinion to the Court that I have a duty to assist the Court and that I am not to be an advocate for any party. I have prepared my report in conformity with that duty.
3. I received my Bachelor of Arts in Theology from Union College in Lincoln, Nebraska in 1995.
4. I received my Masters of Arts in Religious Studies from the University of Alberta in 2009.
5. For the past 2 years, I have studied Canada's polygamous Mormon sect in Bountiful, British Columbia and its American counterparts in Utah and Arizona.
6. My research has focussed on the historicity and practice of polygamy within the Fundamentalist Church of Jesus Christ of Latter-day Saints (the "FLDS") and the government of British Columbia's failure to prosecute polygamy.

7. To date, I have authored several class-related papers on these topics as part of my PhD studies.
8. My work as a Research Assistant at the University of Alberta involves helping in the oversight and maintenance of one of the largest collections of material on Alternative Religions in North America.
9. My work as a Teaching Assistant at the University of Alberta includes the following courses:
 - (a) Intro to Religious Studies/Theory and Methodology in the study of Religion; and
 - (b) Sociology of Religious Sects.
10. The above qualifications, amongst other qualifications, are set out in my curriculum vitae, a true copy of which is attached as **Exhibit "A"** to this my Affidavit.
11. Attached as **Exhibit "B"** to this my Affidavit is the report that I have prepared for the purposes of this Reference.
12. I make this Affidavit for the purposes of providing information to this Court.

SWORN before me at the City of)
 Edmonton, in the Province of Alberta, this)
13 day of July, 2010.)


 _____)
 A Notary Public in and for the Province of)
 Alberta)


 _____)
 TIMOTHY DUNFIELD)

Tinashe Mtshiya
Student-At-Law

IN THE SUPREME COURT OF
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AFFIDAVIT OF TIMOTHY DUNFIELD

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This is Exhibit " A " referred to in the Affidavit of

TIMOTHY DUNFIELD

Sworn before me this 13 day of JULY 2010

[Signature]

A Notary Public, A Commissioner for Oaths in and for the Province of Alberta

TIMOTHY DUNFIELD

AREAS OF INTEREST: RELIGIOUS STUDIES,
ALTERNATIVE RELIGIONS, POLYGAMY, LOST BOYS,
RELIGION AND CULTURE, SOCIAL SCIENTIFIC
APPROACHES TO THE STUDY OF RELIGION

CAMPUS ADDRESS:
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EDUCATION: Bachelor of Arts in Theology, (1995)
Union College, Lincoln, Nebraska

Master of Arts in Religious Studies (2009)
University of Alberta, Edmonton, Alberta

PhD Religious Studies (scheduled for completion in 2013)
University of Alberta, Edmonton, Alberta

BACKGROUND COURSES INCLUDE:

HISTORY OF THE FLDS	GENDER AND FAMILY
SECTS AND DEVIANT RELIGIONS	SOCIOLOGY OF RELIGION
RELIGION, GLOBALIZATION, AND	PHILOSOPHY OF RELIGION
FUNDAMENTALISM	
CRIMINAL JUSTICE IN CANADA	

EMPLOYMENT:

University of Alberta (June 2007 – Current)
Research and Teaching Assistant

South Hills Church Community (2006-2007)
Creative Arts Director

PROFESSIONAL MEMBERSHIPS: AMERICAN ACADEMY OF RELIGION, INTERNATIONAL CULTIC
STUDIES ASSOCIATION

HONORS AND AWARDS: Queen Elizabeth II Academic Scholarship 2009, 2010

Expert Report

July 2010

Timothy Dunfield, M.A., PhD student

University of Alberta

Edmonton, Alberta

This is Exhibit " B " referred to in the
Affidavit of

TIMOTHY DUNFIELD

Sworn before me this 13 day
of JULY 2010

Tinashe Mtshiya
A Notary Public, A Commissioner for Oaths
in and for the Province of Alberta

Tinashe Mtshiya
Student-At-Law

I currently am a PhD student at the University of Alberta, and my area of study is the effects of polygamy on boys and young men in FLDS communities, who are often known as the "Lost Boys". The Lost Boys are a group of young men (estimates place their number at over 1,000) who have been reported to have suffered harm as a result of their isolation in or expulsion from their communities.

Almost no academic research exists on these boys, and for the most part their circumstances have gone undocumented in the academic community. Therefore I use autobiographies written by some of these boys, chapters or sections from non-academic books that mention the Lost Boys, recordings of Warren Jeffs (currently serving a prison sentence in Utah), and articles from newspapers, magazines, and the Internet as the basis for my work.

The Social Scientific Methodology I Employ

For the social scientist and researcher, research is a process of trying to gain a better understanding of the complexities of human experience. The researcher gathers information about actions and interactions, reflects on their meaning, arrives at and evaluates conclusions, and eventually puts forward an interpretation (Marshall and Rossman, 2006: 23). Because social scientists believe that an individual's social environment influences the choices that individual makes, the social scientist is committed to discovering the role played by social considerations in human behaviour (McIntyre, 2005: 20-21). The first stage of social science research is a review of existing literature on the topic. From the literature review, the social scientist then moves on to other methodologies, either qualitative or quantitative, such as survey, experiment, and field research, including observation and interviews (McIntyre, 2005: 117-122, 207-228).

My literature review focuses on the available literature regarding polygamy within the FLDS and consists of the stories of former members of the FLDS as well as books written by journalists and academics who write about polygamy and the FLDS. Social scientists employ a range of methods in order to analyse a vast breadth of social phenomena; from census survey data derived from millions of individuals, to the in-depth analysis of a single agents' social experiences; from monitoring what is happening on contemporary streets, to the investigation of documents. Social scientists also at times, rely on the information obtained from interviews with

either large sample groups or individuals. Broadly, social science methods fall under one of two categories, either quantitative (statistical analysis of large data samples) or qualitative (understanding social phenomenon through interviews, direct observation, textual analysis, and personal interviews with subjects). Qualitative research is primarily concerned with meaning rather than measuring as well as understanding why individuals and groups think and behave the way they do (Keegan, 2009: 11). My research employs a qualitative approach since I rely heavily on textual analysis in my research and because of the absence of quantitative studies in this area. Therefore, my research, like many qualitative researchers focuses on researching accessible data sources such as newspapers, magazines, internet sites, as well as reading existing qualitative reports (Keegan, 2009: 73).

Within the various social scientific methodologies, I rely heavily on *narrative analysis*. Narrative analysis seeks to describe the meaning of experiences for those who frequently are marginalized or oppressed, as they construct the stories (narratives) of their lives (Marshall and Rossman, 2006: 6). When employing narrative analysis, especially when analyzing autobiographical accounts, it is important to assess the reliability of the account and the information contained within. Thus, a researcher does not draw a conclusion based on one account. Rather as similar themes emerge from various sources (i.e. interviews, several autobiographies tell the same story, newspaper and media stories, and legal cases) a source may become more reliable since other sources confirm the information. Researchers can then begin to draw conclusions based on similar accounts from multiple autobiographies and memoirs.

Because the majority of Lost Boys live in the United States and are exiles from polygamous FLDS communities in Utah and Arizona, much, if not most, of the information available focuses on American stories. (One notable exception is Daphne Bramham's *The Secret Lives of Saints* (2008) appended to this affidavit).

Despite the fact that polygamy critics and former members of polygamist communities such as the Fundamentalist Church of Jesus Christ of Latter-day Saints (FLDS) write much of the polygamy-themed literature, the similarity between former members' accounts lends credibility to their claims, and there are discernible patterns in the various accounts that permit some general observations to be made with some confidence.

From its very inception under Mormon founder Joseph Smith, and later Brigham Young, polygamy's survival, first within the Mormon Organization and later, after the Mormon Organization abandoned the practice the FLDS organization, has relied upon the availability of young women while at the same time limiting competition among men for those women. Since older married men are most in competition for new wives in order to insure their ascendance to the highest level of heaven described in Mormon theology, young men have little chance of securing a bride since men do not choose spouses for themselves. Authorities in the United States estimate that as many as 1,000 young FLDS boys, some as young as thirteen, have been

forcibly removed from their communities in order to eliminate competition for young brides among the older men (Zeitzen, 2008: 173-174).

Beginning with former prophet Roy Johnson in 1957 and continuing with both Rulon and Warren Jeffs the FLDS arrange all marriages within the community. Roy Johnson enacted what he called the “Law of Placing”. This new “law” indicated that only the prophet could choose marriage partners (Jeffs, 2009: 18). The FLDS continue a longstanding practice of the prophet selecting and arranging marriage partners as a way to reward his most devoted male followers and to ensure that those closest to the prophet receive the requisite number of wives to ensure their eternal glorification. Critics and apostates claim that the men closest to the prophet received the most (and youngest) wives (*Banking on Heaven*: 2006; Bramhan, 2008: 251, 262; Mackert, 2008: 122). Boys, however, did not know if the Council would ever allow them to marry, and therefore, they attempted to prove themselves worthy of a wife (Mackert, 2008: 115-116). Mackert indicates that FLDS leaders create an intricate process through which young men must progress until leadership considers them worthy of marriage. In reality, however, the determination of worthiness is a political decision (Jeffs, 2009: 7-9; Kilbridge, 1994: 73; Mackert, 2008: 120-121). The goal of this intricate process is to make it so hard for the “less-desirable” young men to be worthy of a bride that these young men finally realize the prophet will never allow them to marry (in some cases even monogamously) and therefore they choose to leave the community on their own (Bramhan, 2008: 251-255; Mackert, 2008: 120-121).¹ If these boys do not choose to leave on their own the polygamous community forces them out, sometimes with the help of the local police department (in Colorado City, Arizona polygamists loyal to the local leader comprise most of the local police [Bramham, 2008: 370-371; Jessop and Brown, 2009: 70-71, 230, 255]).

Those boys and young men who do remain in polygamist communities are in competition for wives with older, more established men who have already proven themselves worthy in the eyes of the leadership. In the 2006 documentary, *Banking on Heaven*, former polygamist and FLDS plural wife Carolyn Jessop explained that the FLDS does not expel boys if their father is high up in the community. The community views these “privileged” boys as the next priesthood royalty, and therefore, retains them within the community and allows them to practice polygamy (*Banking on Heaven*: 2006). For young men in the community, especially those who do not come from “elite” families within the ever-changing hierarchy, there is little chance that those in power will ever give them the requisite number of wives, if any.²

¹ Mackert also claims that when boys did not leave the community on their own, The FLDS leadership dropped some boys off on the streets of St. George, Utah, and told them to never return to the FLDS community (Mackert, 2008: 205-206). This indicates that the FLDS encourage unworthy boys to leave the community on their own but if need be then the FLDS leadership will force the unworthy boys to leave.

² Brent Jeffs, former Lost Boy and nephew of Warren Jeffs claims that there is a hierarchy among FLDS men where the FLDS allow leading families to keep their young boys within the FLDS community and that these boys may possibly obtain three wives in the future (Jeffs, 2009: 8-9).

It appears that young men in FLDS communities therefore face three options. First, they can choose to remain within the community as long as they follow stringent community guidelines. If they choose to remain then they know that they face almost insurmountable obstacles to marriage. Even if they are fortunate enough for the prophet to select wives for them, their wives will not be women of their choice. Second, they can voluntarily choose to leave the community. Many of the “Lost Boys” choose to leave rather than face expulsion. It is uncertain whether their choice to leave the community allows the boys to maintain contact with family or return if they wish. Third, as a result of the fierce competition for brides, FLDS leadership will likely expel many of these boys for various infringements (Altman and Ginat, 1996: 102; Bramhan, 2008: 251-255; Jeffs, 2009: 9; Jessop, 2007: 324-325; Mackert, 2008: 120-121).

According to Lost Boys, former members, and critics, FLDS leadership forbids parents from mourning or contacting the boys they expel, and these boys (some as young as thirteen) must learn to survive on their own without emotional or financial support from their parents. Polygamy can therefore force many young men into situations they are unequipped to handle and according to media reports as well as accounts of former Lost Boys into dangerous and unhealthy situations involving substance abuse (Billie, 2008: 127, 141; Bramham, 2008: 250-252; Jeffs, 2009: 137-139, 144; Kelly, 2005; Mackert, 2008; Wall, 2008: 47-49, 118-120³).

Because the boys find it difficult to make friends with peers outside the community (at least initially) many of the Lost Boys find companionship with other Lost Boys. These groups of boys often live together in small, cramped apartments where they experiment with narcotics, alcohol, and often engage in criminal behaviour as they attempt to assimilate into a world they are ill prepared to engage with (Billie, 2008: 127; Jeffs, 2009: 135-150). If they are fortunate enough to get a job on a construction crew in a city like Saint George, Utah, or Las Vegas, Nevada, then the boys will face a new challenge; how to handle money. Since many of them are used to receiving little to no pay while working for FLDS-run companies, when at last they do receive a real pay check they have little concept of how to manage their money. Based on personal interviews conducted in Las Vegas with an individual who informally assisted the Lost Boys, one major area of concern is the boys' inability to be fiscally responsible, a situation that often leads to drug and alcohol abuse, debt, and ultimately an existence at or below the poverty line (personal interview).

According to Brent Jeffs, most Lost boys stay lost because they are unable to express their feelings and are unable to learn how to function in group situations in the world outside of polygamist communities. They do not know how to negotiate social situations or make their needs known. They stay in unhealthy relationships or job situations or behave irresponsibly because they do not know how to think for themselves. All they know is obedience or disobedience, and once outside the community they have no frame of reference in which to

³ In Elissa Wall's book, there is a picture of her younger brother leaving home with a cardboard sign saying “Denver” on it after he was kicked out of the community.

operate (Jeffs, 2009: 148). They no longer have parents or community leaders demanding their obedience. The boys have become their own authority and are unaware of the consequences of their actions on themselves and the community in which they now live.

The “mathematics” needed to ensure the survival and continuation of polygamy often means that polygamist communities must get rid of excess boys in order to ensure a proportionately higher number of young girls will be eligible for marriage.

As I have shown, the boys who leave polygamist communities face unique survival challenges once outside the community. Their indoctrination at the hands of FLDS leaders, teachers, and parents severely limits their socialization into society and may impair their ability to make wise decisions. Ultimately they face a difficult and dangerous road as they attempt to raise themselves and survive in a world they are ill-equipped to face. The Lost Boys face these and other challenges as the direct result of polygamy’s influence on them, their parents, and all who adhere to this practice, especially in settings where entire communities employ its practice.

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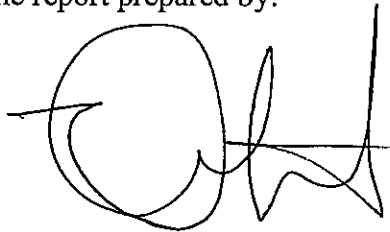
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The report prepared by:

A handwritten signature in black ink, appearing to read 'TD', with a large circular flourish on the left and a vertical line on the right.

Timothy Dunfield