

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

ORDER

BEFORE THE HONOURABLE

CHIEF JUSTICE BAUMAN

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TUESDAY, the 16th day of
FEBRUARY, 2010

The CASE MANAGEMENT CONFERENCE coming on for hearing at the
Courthouse, 800 Smithe Street, Vancouver, British Columbia, on Tuesday,
February 16, 2010 before Chief Justice Bauman, and on hearing Craig Jones,
Veronica Jackson and Karrie Wolfe for the Attorney General of British Columbia;

Deborah Strachan and BJ Wray for the Attorney General of Canada; George Macintosh, Q.C., Reference Amicus with Timothy Dickson; Joseph Arvay, Q.C. (by telephone) and Alison Latimer for the Applicant Winston Kaye Blackmore; Brian Samuels and Kieran Bridge for the Applicant Stop Polygamy in Canada; Kasari Govender for the Applicant West Coast Women's Legal Education and Action Fund; Douglas Christie (by telephone) for the Applicant Canadian Association for Free Expression; Patrick Dickie for the Applicant British Columbia Teachers' Federation; Robert Wickett for the Applicants James Oler & Fundamentalist Church of Jesus Christ of Latter Day Saints; Monique Pongracic-Speier for the Applicant British Columbia Civil Liberties Association; Jonathan Baker for the Applicant REAL Women of Canada; Gerald D. Chipeur Q.C. and David Woodside (Articled Student) (by telephone) for the Applicant Christian Legal Fellowship; Jordana Dhahan for the Applicant Canadian Polyamory Advocacy Association; David Matas (by telephone) for the Applicant Beyond Borders: Ensuring Global Justice for Children; Stanley Martin and Andrew Nathanson for the Applicant Catholic Organization for Life and Family & Knights of Columbus, BC and Yukon Chapter; and Brent Olthuis for the Applicant Canadian Coalition for the Rights of Children & David Asper Centre for Constitutional Rights,

THIS COURT ORDERS THAT:

(1) The Applicants British Columbia Civil Liberties Association; Beyond Borders: Ensuring Global Justice for Children; British Columbia Teachers' Federation; Canadian Association for Free Expression; Canadian Coalition for the Rights of Children, jointly with David Asper Centre for Constitutional Rights; Canadian Polyamory Advocacy Association; Catholic Organization for Life and

Family, jointly with Knights of Columbus, BC and Yukon Chapter; Christian Legal Fellowship; Fundamentalist Church of Jesus Christ of Latter Day Saints and James Oler in his capacity as Bishop of the FLDS; REAL Women of Canada; Stop Polygamy in Canada; and West Coast Women's Legal Education & Action Fund (hereinafter "Interested Persons") are declared to be persons interested in the Reference pursuant to section 5 of the *Constitutional Question Act* R.S.B.C. 1996 c.68, and each is entitled to be heard according to the following terms and conditions:

- (A) Each Interested Person may:
 - (i) adduce evidence in the form of affidavits, expert reports, and 'Brandeis brief' materials, in accordance with the schedule directed by the Court;
 - (ii) make written submissions at the hearing of the Reference, of a length to be determined by the Court;
 - (iii) make oral submissions at the hearing of the Reference, of a length to be determined by the Court; and
 - (iv) participate in the evidentiary phase of the hearing if, and to the extent, permitted by further direction of the Court.

- (B) Each Interested Person will:
 - (i) ensure that its evidence and submissions are not unnecessarily duplicative of the Parties' or other Interested Persons;
 - (ii) abide by the schedule established by the Court in consultation with the Parties; and
 - (iii) provide its evidence to other participants in electronic form via email attachment, and accept service and delivery of other participants' materials in the same manner.

- (C) No costs will be awarded in favour of or against Interested Persons.

THIS COURT FURTHER DIRECTS THAT:

(2) The Application of Winston Blackmore for party or intervenor/interested person status and Mr. Blackmore's anticipated application for funding will be heard together March 26th, 2010.

(3) Mr. Blackmore will file his materials for these applications, including evidence in support and notices of constitutional question, on or before March 5, 2010, and deliver the materials to counsel for the Attorneys General of BC and Canada, and the Reference Amicus, by that same date.

THIS COURT FURTHER DIRECTS THAT:

(4) On or before February 28, 2010, the Attorney General of British Columbia will file a document that will set out in a summary way his position on the Reference questions and the facts he expects to prove in support of his position.

(5) On or before April 15, 2010, The Attorney General of British Columbia will prepare and file a brief setting out the legislative history of section 293 and its precedent provisions, along with copies of the supporting documents.

(6) Evidence in the form of affidavits, expert reports, and 'Brandeis brief' materials are to be exchanged according to the following schedule, with no further evidence except by leave of the Court:

June 8, 2010: Evidence from Amicus and Interested Persons in support of the position that s. 293 violates any of the rights or freedoms enshrined in the *Charter*,

July 16, 2010: Evidence from AGBC, AG Canada, and Interested Persons opposing the position that s. 293 violates *Charter* rights, and/or supporting the position that any violation is a justified infringement under s. 1;

September 30, 2010: Evidence from Amicus and Interested Persons opposing the position that a violation is justified under s. 1.

(7) Participants are at liberty to apply for extensions of the deadlines set out above.


(8) No person will be compelled to testify in the course of the Reference, but any person offering evidence under oath or affirmation may be subject to examination and cross-examination.

THIS COURT FURTHER DIRECTS THAT:

(9) A two-day Case Management and Trial Scheduling Conference is scheduled for October 4 and 5, 2010.

THIS COURT FURTHER ORDERS THAT:

(10) Endorsement of approval of the form of this Order is dispensed with.

CISC.
By the Court

REGISTRAR

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