

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. 533 DATED OCTOBER 22, 2009 CONCERNING THE CONSTITUTIONALITY OF S. 293 OF THE *CRIMINAL CODE OF CANADA*, R.S.C. 1985, c. C-46

**SUPPLEMENTAL BOOK OF AUTHORITIES
OF THE *AMICUS CURIAE***

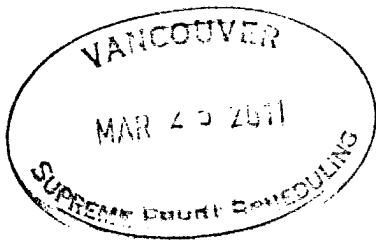
**VOLUME 1 OF 4
Tabs 1 - 21**

The Amicus Curiae

**George K. Macintosh, Q.C.
Ludmila B. Herbst
Tim Dickson**

Farris, Vaughan, Wills & Murphy LLP
2500 - 700 West Georgia Street
Vancouver, BC V7Y 1B3

Telephone: 604-684-9151
Facsimile: 604-661-9349



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. 533 DATED OCTOBER 22, 2009 CONCERNING THE CONSTITUTIONALITY OF S. 293 OF THE *CRIMINAL CODE OF CANADA*, R.S.C. 1985, c. C-46

**SUPPLEMENTAL BOOK OF AUTHORITIES
OF THE *AMICUS CURIAE***

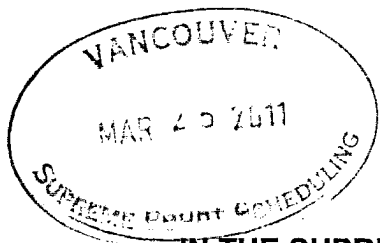
**VOLUME 2 OF 4
Tabs 22 - 33**

The Amicus Curiae

**George K. Macintosh, Q.C.
Ludmila B. Herbst
Tim Dickson**

Farris, Vaughan, Wills & Murphy LLP
2500 - 700 West Georgia Street
Vancouver, BC V7Y 1B3

Telephone: 604-684-9151
Facsimile: 604-661-9349



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. 533 DATED OCTOBER 22, 2009 CONCERNING THE CONSTITUTIONALITY OF S. 293 OF THE *CRIMINAL CODE OF CANADA*, R.S.C. 1985, c. C-46

**SUPPLEMENTAL BOOK OF AUTHORITIES
OF THE *AMICUS CURIAE***

**VOLUME 3 OF 4
Tabs 34 - 49**

The Amicus Curiae

**George K. Macintosh, Q.C.
Ludmila B. Herbst
Tim Dickson**

Farris, Vaughan, Wills & Murphy LLP
2500 - 700 West Georgia Street
Vancouver, BC V7Y 1B3

Telephone: 604-684-9151
Facsimile: 604-661-9349



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. 533 DATED OCTOBER 22, 2009 CONCERNING THE CONSTITUTIONALITY OF S. 293 OF THE *CRIMINAL CODE OF CANADA*, R.S.C. 1985, c. C-46

**SUPPLEMENTAL BOOK OF AUTHORITIES
OF THE *AMICUS CURIAE***

**VOLUME 4 OF 4
Tabs 50 - 76**

The Amicus Curiae

**George K. Macintosh, Q.C.
Ludmila B. Herbst
Tim Dickson**

Farris, Vaughan, Wills & Murphy LLP
2500 - 700 West Georgia Street
Vancouver, BC V7Y 1B3

Telephone: 604-684-9151
Facsimile: 604-661-9349

INDEX TO SUPPLEMENTAL BOOK OF AUTHORITIES OF THE AMICUS CURIAE

Tab

VOLUME 1

Legislation

1. *Age of Majority Act*, R.S.B.C. 1996, c. 7
2. *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, ss. 91, 92, 95
3. *Criminal Code*, R.S.C. 1985, c. C-46: ss. 114, 150-155, 170-173, 212-214, 265-295, 423, 718.2, 810
4. *Edmunds Act*, 1882, (Sess. I) c. 47
5. *Edmunds-Tucker Act*, 1887, (Sess. II) c. 397
6. *Forced Marriage (Civil Protection) Act 2007*, UK, c. 20
7. *Immigration and Nationality Act*, 8 U.S.C. §§ 1182(a)(2) and 1182(a)(10)(A)
8. *Immigration and Refugee Protection Act*, R.S.C. 2001, c. 27, ss. 12-14, 25, 36
9. *Immigration and Refugee Protection Regulations*, SOR/2002-227 (excerpts)
10. *Interpretation Act*, R.S.C. 1985, c. I-23, s. 10
11. *Marriage Act*, R.S.B.C. 1996, c. 282
12. *Morrill Act*, 1862, (Sess. II) c. 126
13. *Poland Act*, 1874, (Sess. I) c. 469
14. *Utah Criminal Code* at 76-7-103. Adultery (1) and 76-7- I 04. Fornication (1)

Cases

15. *A. v. B.*, 2009 QCCS 3210
16. *Ackland v. Yonge-Esplande Enterprises Ltd.* (1992), 95 D.L.R. (4th) 560 (C.A.)
17. *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143
18. *Austin v. Goertz*, 2007 BCCA 586, 74 B.C.L.R. (4th) 39
19. *Barbeau v. British Columbia (Attorney General)* (2003), 13 B.C.L.R. (4th) 1, 2003 BCCA 251
20. *Bedford v. Canada (Attorney General)*, 2010 ONSC 4264
21. *Black v. Law Society of Alberta*, [1986] 3 W.W.R. 590 (C.A.), appeal to the Supreme Court of Canada dismissed, [1989] 1 S.C.R. 591

Tab

VOLUME 2

22. *Bronson v. Swensen*, 500 F.3d 1099 (2007 Utah)
23. *Canada (Minister of Employment and Immigration) v. Chiarelli*, [1992] 1 S.C.R. 711
24. *Chaoulli v. Quebec (Attorney General)*, [2005] 1 S.C.R. 791, 2005 SCC 35
25. *Dunmore v. Ontario (Attorney General)*, [2001] 3 S.C.R. 1016, 2001 SCC 94
26. *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326
27. *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844
28. *Halpern v. Canada (A.G.)* (2002), 60 O.R. (3d) 321 (Div. Ct.)
29. *In re Sara Steed et al.*, 2008 Tex. App. LEXIS 3652
30. *In re Texas Department of Child and Realtor Services*, 255 S.W.3d 613; 2008 Tex. LEXIS 510; 51 Tex. Sup. J. 967
31. *In re the Criminal Code, 1892, sections 275-276, relating to Bigamy (1897)*, 37 S.C.R. 461
32. *Kindler v. Canada (Minister of Justice)*, [1991] 2 S.C.R. 779
33. *Labreche v. Canada (Citizenship and Immigration)*, 2009 CanLII 82437 (I.R.B.)

VOLUME 3

34. *Maier v. Canada (Citizenship and Immigration)*, 2009 CanLII 72215 (I.R.B.)
35. *Mbollo v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1267
36. *Molodowich v. Penttinen* (1980), 17 R.F.L. (2d) 376 (Ont. Dist. Ct.)
37. *Mussani v. College of Physicians & Surgeons* (2003), 226 D.L.R. (4th) 511, 172 O.A.C. 1
38. *P.I.P.S.C. v. Northwest Territories (Commissioner)*, [1990] 2 S.C.R. 367
39. *Prosecutor v. Brima, Kamara and Kanu*, Case No. SCSL-2004-16-A (2008)
40. *R. v. Brierly* (1887), 14 O.R. 525
41. *R. v. C.M. (M.(C.))* (1992), 75 C.C.C. (3d) 556 (Ont. Gen. Div.); (1995), 98 C.C.C. (3d) 481, 23 O.R. (3d) 629 (C.A.)
42. *R. v. Cook*, [1998] 2 S.C.R. 597

Tab

- 43. *R. v. Harris* (1906), 11 C.C.C. 254 (Que. C.S.P.)
- 44. *R. v. Howard* (1965), 54 W.W.R. 484, 1965 CarswellBC 151 (Co. Ct.)
- 45. *R. v. Mills*, [1999] S.C.J. No. 68; [1999] 3 S.C.R. 668
- 46. *R. v. Paice*, [2005] 1 S.C.R. 339, 2005 SCC 22
- 47. *R. v. Taylor*, [1950] 2 K.B. 368
- 48. *R. v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154
- 49. *Reference re: Criminal Code, s. 293*, 2010 BCSC 517

VOLUME 4

- 50. *Reference re: Criminal Code, s. 293*, 2010 BCSC 1351
- 51. *Reference re: Public Service Employee Relations Act (Alberta)*, [1987] 1 S.C.R. 313
- 52. *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27
- 53. *Roberts v. United States Jaycees*, 468 U.S. 618, 104 S.Ct. 3244 (1984)
- 54. *Ruparel v. Canada (Minister of Employment and Immigration)*, [1990] F.C. 615 (T.D.)
- 55. *Singh v. Minister of Employment and Immigration*, [1985] 1 S.C.R. 177
- 56. *Slahi v. Canada (Justice)* (2009) 340 F.T.R. 236, 2009 FC 160; aff'd 2009 FCA 259
- 57. *Stace-Smith v. Lecompte*, 2011 BCCA 129
- 58. *State of Utah v. Holm*, 137 P.3d 726, 2006 UT 31
- 59. *The Late Corporation of the Church of Jesus Christ of Latter Day Saints v. United States*, 136 U.S. 1 (1890)
- 60. *United States v. Musser*, 4 Utah 153, 7 P. 389 (1885)
- 61. *Withler v. Canada (Attorney General)*, 2011 SCC 12

Secondary Authorities

- 62. "Marriage and Divorce in Canada" (1915) 51 Canada Law Journal 81
- 63. Bailey, Martha, "Should Polygamy Be Criminalized?" (November 19, 2009), available at <http://ssrn.com/abstract=1509459>

Tab

64. Beaudoin and Mendes, eds., *Canadian Charter of Rights and Freedoms*, 4th ed. (Markham: LexisNexis, 2005) at pp. 356-358
65. Citizenship and Immigration Canada, *OP 2 – Processing Members of the Family Class* (Ottawa: Government of Canada, 2006) (excerpts)
66. Driedger, E.A., *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983) at p. 87
67. Gat, “The human motivational complex: Evolutionary theory and the causes of hunter-gatherer fighting. Part I. Primary somatic and reproductive causes”, accessed online
68. Hogg, Peter, *Constitutional Law of Canada*, (Scarborough: Carswell, 1997) at s. 37.1(g)
69. Jankowiak, William, “Co-Wives, Husband, and the Mormon Polygynous Family” (2008) 47 *Ethnology* 163
70. Lely, J.M., *Wharton’s Law Lexicon*, 7th ed. (London: Stevens and Sons, 1883), p. 636
71. Onions, C.T. ed., *Shorter Oxford English Dictionary*, 3rd ed. Vol. II (Oxford: Oxford University Press, 1973), definitions of “polygamy”, “polyandry”, polygyny” at pp. 1623-1624
72. Stuart, Don, *Canadian Criminal Law: A Treatise*, 5th ed. (Scarborough: Thomson Carswell, 2007) at pp. 587-588, 597-604, 607
73. *Sullivan and Driedger on the Construction of Statutes*, 4th ed. (Markham, Butterworths, 2002) at pp. 154-155, 159
74. Tribe, Lawrence, *American Constitutional Law*, 2d ed. (New York: The Foundation Press, Inc., 1988) at pp. 1270-1271
75. Williams, Glanville, “Bigamy and the Third Marriage” (1950) 13 *Modern Law Review* 417
76. Williams, Glanville, *Textbook of Criminal Law*, 2nd ed. (London: Stevens & Sons, 1983) at p. 549