

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

Opening Statement of Stop Polygamy in Canada

1. The Interested Person Stop Polygamy in Canada (“SPC”) agrees with the positions taken by the Attorney General for British Columbia (“AG BC”) in his Opening Statement.
2. Any analysis of the protections afforded by the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) must reflect the purpose of the *Charter* as expressed by the Supreme Court of Canada in *R v. Oakes*. While the *Oakes* case is most commonly referred to regarding the justification test under s. 1, it is important to note that this test was developed with the underlying purpose of the *Charter* in mind. The purpose of the *Charter* is to guard prescribed individual rights and freedoms against unjustified intrusion by the state, with the ultimate goal of allowing for a free and democratic society as a whole.
3. As explained in *R v. Oakes*, the purpose of the *Charter* is to be understood not on an individual basis, for the protection of any one person’s rights, but on a larger societal basis which recognizes that individual rights must necessarily be reconciled with the rights and

freedoms of others in a manner that reflects the Canadian values of freedom and democracy. As stated in *Oakes* at para 64:

...Inclusion of these words [free and democratic society] as the final standard of justification for limits on rights and freedoms refers the court to the very purpose for which the Charter was originally entrenched in the Constitution: Canadian society is to be free and democratic. **The court must be guided by the values and principles essential to a free and democratic society, which I believe embody, to name but a few, respect for the inherent dignity of the human person**, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society. The underlying values and principles of a free and democratic society are the genesis of the rights and freedoms guaranteed by the Charter and the ultimate standard against which a limit on a right or freedom must be shown, despite its effect, to be reasonable and demonstrably justified.

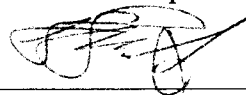
4. The evidence adduced by SPC in this case will clearly demonstrate that polygamy, and without limitation the form of polygamy practiced by Fundamentalist Mormon communities, runs counter to the values and principles essential to a free and democratic society as entrenched in the *Charter*. It does so by causing real harms to the inherent dignity of women, girls and boys subjected to sexual, physical and mental abuses, creates structural inequalities between men and women, and denies, hinders and obstructs the free participation of women, girls and boys in Canadian society. All of these cumulative harms are detrimental to the protection and development of the free and democratic society that lies at the core of the *Charter's* protections.

5. The prohibition against polygamy is not about state intrusion into the bedrooms of the nation. Nor is it an imposition of one religious tenet over another. Rather, it provides protections for equality, democracy and safety of members of society who are made vulnerable as a result of polygamy. Polygamy necessarily affects the rights and freedoms of others, including both those who do and those who do not practice it. Polygamy is a form of autocratic society, and historically such societies have resulted in loss of civil liberties, abuse, and enslavement.

6. The Amicus states in his opening statement that polygamy “was widely practiced over the course of human history” and “is still practised in a number of countries”. SPC says that western democracies consistently criminalize polygamy, and in any event, the fact that some countries still allow polygamy provides no reason for Canada to do so.

7. SPC’s evidence in these proceedings will focus on the harms caused by or associated with polygamy, primarily in the Fundamentalist Mormon communities, but also in Muslim communities. The affidavits filed by SPC include:
 - a. An academic expert in the history of polygamy in the United States, Professor Marci Hamilton. Her evidence also speaks to the legislative history in the United States related to the practice of polygamy;
 - b. An academic expert in family law in Canada, Professor Nicholas Bala, of Queen’s University;
 - c. A professor of sociology, Professor Stephen Kent, who has particular expertise in Fundamentalist Mormon communities in North America;
 - d. A medical doctor, Dr. Susan Stickevers, with particular expertise in the harms associated women in Muslim polygamist relationships;
 - e. A former lieutenant in the Salt Lake County Sheriff’s Office, John Llewellyn, who was a member of a polygamous Fundamentalist Mormon community, with personal knowledge of the harms associated with polygamy in that community;
 - f. A social worker based in Western United States, who grew up in a Fundamentalist Mormon (polygamous) community, with personal knowledge of the harms associated with polygamy in that community.

All of which is respectfully submitted:



Counsel for Stop Polygamy in Canada