

A. Campbell #2
October 14, 2010

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 #2 OF ANGELA CAMPBELL

I, Angela Campbell, Professor of Law, of McGill University, in Montreal, Quebec, MAKE OATH AND SAY AS FOLLOWS:

1. I am a Professor and Director of the Institute of Comparative Law at the Faculty of Law at McGill University ("McGill Law"). I pursue academic research in the area of women in polygamous marriages, particularly in the community of Bountiful, British Columbia, and as such I have personal knowledge of the facts and matters deposed to herein, save and except where the same are stated to be made on information and belief, and where so stated I verily believe them to be true.
2. My personal and professional background is set out in my first affidavit adduced in these proceedings ("Affidavit #1").

3. As indicated in Affidavit #1, part of my scholarly research has involved an empirical, qualitative study in the community of Bountiful, British Columbia, which assesses the way in which women in polygamous marriages are affected both by polygamy and by Canada's legal treatment of this practice. The details of this research project are set out in Affidavit #1.
4. From this project, it became clear to me that, at least from the perspective of the women whom I interviewed, polygamy in Bountiful has its roots in the religious tenets of the Fundamentalist Church of Jesus Christ of Latter Day Saints (FLDS), which is the faith followed within this community. This point is explained more fully in Affidavit #1.
5. My research also indicates that the criminalization of polygamy has had adverse outcomes for Bountiful's residents. That is, as explained more fully below, residents of Bountiful feel ashamed, stigmatized and highly anxious because their way of life is branded as criminal. Until, and even subsequent to, the arrests of two Bountiful residents in January 2009, community members had little sense as to whether and how the prohibition of polygamy would be enforced. This has resulted in deep worry about the potential loss of their freedom, their children, their spouses, or their property.
6. This affidavit outlines my research findings in Bountiful on four particular themes: (1) the level of choice residents (especially women) exercise with respect to marriage and reproduction; (2) intra-familial relationships (i.e., women's relationships with husbands and with sister wives); (3) women's self-expression, self-fulfillment and contributions to family and community, particularly through work and education; and (4) women's understanding of the laws related to polygamy in Canada and how they evaluated or perceived these laws.
7. This affidavit also sets out findings rooted in interdisciplinary doctrinal research regarding the social, economic and health implications for women in polygamy in a more global context.

8. A final part of this affidavit offers comments on the expert report prepared by Professor Rebecca J. Cook for the Attorney General of Canada and submitted to the Court as evidence in this Reference.

9. I certify that I:
 - (a) am aware that in giving my opinion to the Court, I have a duty to assist the Court and am not to be an advocate for any party;
 - (b) have made this Affidavit in conformity with that duty; and
 - (c) will, if called on to give oral or further written testimony, give that testimony in conformity with that duty.

10. I further confirm that, although I provided my Affidavit #1 in this proceeding prior to the introduction of the requirement in the British Columbia Supreme Court Rules to provide this certification, subparagraphs (a)-(c) of paragraph 9 apply also to that earlier Affidavit.

Preliminary Note on Research Methodology

11. Prior to setting out the various parts of the present Affidavit, a note about research methods is in order. The research methodology that I deployed in carrying out my research on polygamy in Bountiful is explained in detail in Affidavit #1 (see paras. 9-29). I believe that these research methods, which are based on a combination of qualitative interviews, focus group discussions, and participant and community observation, are sound. Yet because my formal participant group is limited to 22 women who have given interviews, my work does not purport to speak for the experiences of all women in polygamy, or even all women in Bountiful. As I have stated in my earlier writing on this topic:

The perspectives of participants in this project are not all-encompassing or quantitatively representative; this article does not purport to illuminate the encounters of all women in Bountiful – or all polygamous wives in other places – with plural marriage. There are important limits to the usefulness of these narratives in coming to broader generalizations about the practice of polygamy in its larger Canadian context, let alone in its international setting. Nevertheless, the stories presented here enrich current scholarship on polygamy

in Canada, which currently consists primarily of secondary research sources that focus on plural marriage communities outside of Canada. (Footnote omitted.)¹

12. Having said this, I have no reason to believe that the participants in my research were merely, as Professor Nicholas Bala suggests in a recent article, “a sample of women who are most positively disposed to this practice [i.e., polygamy].”² This concern is reiterated in Professor Bala’s Affidavit #1 submitted in this Reference (para. 48). My research interviews with women in Bountiful offered a balanced portrayal of what their lives are like. These women accept polygamy, but not all take up this practice personally. Even though they believe that polygamy can yield important benefits for women, many recognized and explained in detail the challenges that living such a lifestyle can impose on a family and on a wife, such as loneliness and jealousy. All of this is explained more fully below.

13. Moreover, I do not see my participant pool as consisting only of women most satisfied with polygamous life in Bountiful. Some participants had chosen monogamous marriage. Others, though in a plural marriage, were able to identify, acknowledge, and talk about difficult aspects of polygamy. Furthermore, two participants are women who left unhappy polygamous marriages. Another woman with whom I spoke at length over two telephone conversations, but whom I did not formally interview, has spoken out vociferously about her negative experiences as a plural wife in Bountiful after leaving this community. Despite her own hardships as a plural wife, she urged me to integrate the first-hand accounts and narratives of women in Bountiful within my research, and spoke critically about current Canadian legal approaches to polygamy.

14. Professor Bala also suggests para. 48 of his Affidavit #1 that “[a]t least some of the women” who had positive experiences were likely encouraged by community members to participate in my research, whereas women with negative experiences might have been intimidated to do so. This is a fair concern. I can comment only on what women with whom I *did* speak shared with me. I cannot say whether some women in Bountiful were apprehensive about being interviewed because of community reprisal, but I was given no indication that this is the case.

¹ Campbell (2009) at 187.

² Bala (2009) at note 75.

This being said, it was clear to me that some women *were* reticent about being interviewed, but this is because they feared that information they gave in this setting could be used against them or other community members by legal actors such as criminal law enforcement agents.

15. Professor Bala's Affidavit #1 (at para. 48) also cites as "unusual" my decision to give participants an opportunity to verify for accuracy any direct quotations or paraphrased statements that I attributed to them in my publications. It is true that this strategy is not one normally adopted in academic research where participant anonymity is preserved. However, when I began my fieldwork in Bountiful in 2008, some residents were deeply apprehensive about speaking with or being interviewed by someone from outside of the community. They felt that the trust they had invested in journalists with whom they had spoken in the past had been violated when the latter published stories that deviated from accounts shared in interviews. Moreover, the initiation of my fieldwork coincided with the raid in April 2008 by law enforcement authorities on the Yearning for Zion FLDS ranch in El Dorado, Texas, where some family members of Bountiful residents live. Shortly after this, in June 2008, then-Attorney General for B.C. Wally Opal had announced his decision to name a third special prosecutor to investigate the laying of criminal charges in Bountiful.

16. In these circumstances, I was of the view that women in Bountiful would be more inclined to participate in my research if they had an opportunity to see comments I planned to attribute to them before these were in print. I did this with each participant prior to publishing any article that drew on my research in Bountiful and cited to participants' comments. This involved extensive contact with my participants through email and by telephone. Over the course of this process, no participant objected to my extraction of their comments from their interviews for use in my written work. No participant withdrew from my research project. No participant asked me to change any of the text I planned to incorporate, save for, (a) grammatical mistakes they identified (e.g., at one point in a paper I spoke of "priested" marriages and a few women clarified that the term as used in the community is "priesthood" marriages), and (b) elaborations on points made in the interview, that aimed to offer fuller information and clarify to me and to the reader what they had stated. I did not at any time feel that this process comprised the integrity of the research interviews conducted in Bountiful.

17. Finally, I note that I have made two research trips to Bountiful, one in 2008 for five days and one in 2009 for seven days. I have also had ongoing contact with several participants by email and phone since I initiated research in this community. Much of this is set out in my Affidavit #1 but I raise it here to clarify Professor Bala's comment in his affidavit, which indicates that my research is based only on the 2008 trip. This likely because Professor Bala would not have known of my more recent 2009 trip, since my work based on this later trip is only being published in fall 2010.

Choice in Marriage and Reproduction

18. As explained in Affidavit #1, marriage in Bountiful is primarily influenced by FLDS teachings, pursuant to which polygamy is central. While FLDS tenets indicate that plural marriage is a requirement for spiritual fulfillment, some residents of Bountiful currently see themselves as in a position choose monogamy over polygamy. Those who choose monogamy still see themselves as FLDS followers, and suggest that their devoutness is reflected in their openness to the possibility of plural marriage, even within their own spousal relationships.

Age of Marriage

19. My understanding is that while historically in Bountiful it was not uncommon for girls to marry during their adolescence (the youngest I heard of was age fifteen or sixteen), this practice is now discouraged and, I was told, no longer followed. Community members with whom I spoke insist that a young person should reach at least the age of adulthood before getting married. Many of the women interviewed for this research married in their early twenties.

20. The relevance of waiting until adulthood to marry was stressed by several research participants. This is reflected, for example, in the following interview excerpt, which is part

of a response one woman gave when I asked her what she would teach her own daughter (who was just a year old at the time of the interview) about married life:

I will teach [her] to be realistic. There's [sic] all these books out nowadays about romance and love but there's more to life than that. There's hard work, there's raising your children and it takes work to make a marriage. It takes a lot of work and effort. Good communication skills with your husband. And I could teach her by my example, by loving my sister wives, and show them that I like plural marriage but I'm not going to force it on [my kids]. If they choose to do that when they get older then that's their choice, but I just want them to show, from me living it right, that they could see the beauty in it, but I'm not going to force them to do it. And another thing is that for Bountiful they say that there are so many underage marriages. There's not. And my daughter, I don't want her getting married till at least forty. Just joking, but I want her to be at least 20 because it feels like they're at least a little bit smarter going out to the marriage life. I was 21.

21. Another participant stressed that she was working to eliminate the practice of underage marriage in her community. She thus stated:

[Y]ou know the only thing I would have done differently than I did, was [...] waited till I was older [to marry], 'cuz I was 16 when I got married. And, I know that within our community, there's [sic] been a lot of girls getting married, at 16. Very rarely, that I know of, rarely married younger than that but, most are older and [...] I often wondered why 16 is the age they got married because really it's kind of a, I think it's, an old-fashioned thing. [...] But that is something that I hope to change. I hope to try to encourage girls to wait and maybe get a career themselves before they get married.

22. Yet, this same participant acknowledged that changing expectations about marriage among the young women in her community is not easy. Her own daughter, she said, felt "peer pressure" to get married as young as 16, and, despite her mother's dissuasive efforts, the young woman did marry before reaching the age of majority.

Spouse Selection

23. In Affidavit #1, I described the relevance for Bountiful of an event known within this community as “the Split”. This refers to a division within the community that began in about 2002, pursuant to the proclamation of Warren Jeffs’, an American FLDS follower, as leader of this Church. As he assumed this position, my understanding is that Jeffs also attempted to quash the authority of Winston Blackmore, the Bishop of Bountiful at that time. Community members thus opted to ally themselves either with Jeffs or Blackmore. The rift within the community translated into sharp divisions and a deep sense of loss within many families. Jeffs has labeled all individuals outside of his faction as apostates, and his followers are prohibited from keeping relationships or even speaking with such individuals.
24. In view of the rift the Split engendered within many families and relationships, many women I interviewed referred to it as the most difficult and stressful experience they have endured.
25. However, when I returned to Bountiful in 2009 for a second round of interviews, a number of women indicated that over the past year (i.e., between summer 2008 and summer 2009) there had been a considerable opening within Jeffs’ side of the community and that members on each side of the divide in Bountiful had become more open to exchanging and being friendly to one another. Thus, by 2009, participants communicated a sense of hope and optimism that their community ultimately would reunite.
26. The Split carried with it an openness to some new ideas and practices that previously had been viewed as intolerable within the FLDS Church. This was the case at least in the Blackmore side of the community.
27. Some women spoke to me about how, since the time of the Split, the community had begun to encourage its young adults to become acquainted with an intended spouse before marriage occurs. This practice, known in the community as “courting”, is seen as fostering a main objective of FLDS marriage, that is, to ensure its lifelong duration. As one woman explained

to me, couples are now supported in any desire they might have to spend time together before a marriage, to ensure that they will be suitable partners:

I got married a long time ago. I see we've got twenty-year-old girls who aren't married [...] and it seems to me like they have a lot more time to get to know each other. [...] It, it's pretty much like our version of dating [...] to see if you're compatible with this person, before you make a commitment. Because marriage, in my books, is eternal. It's not to be tampered with. And you don't just do it without a lot of serious thought.

28. My understanding is that this practice of "courting" is meant only for unattached men and women; courting an already married man remains taboo. Instead, a woman wishing to wed a man with an existing wife (or wives) may spend time with his entire family before marriage, and such time with sister wives was viewed as particularly important to women marrying into plural families. One research participant thus told me:

[A] lady that would look into our family, she would go to the Bishop or her father and talk to them and then the Bishop could come to me and talk to me and then if I felt good about it then I would say yes or no, if I felt I would get along with her and if I wanted her to be my wife then I would say yes, but if I said yes and didn't really want to that would be really hard.

29. Thus, "courting" seemed most valuable for *women*, allowing them to investigate their marriage options and assess their compatibility with prospective sister wives. For existing wives, these exchanges also offered an opportunity to be consulted and to give consent before another wife entered the family.

30. Husbands did not occupy a central place in discussions with women regarding prenuptial interactions in Bountiful. "Courting" was seen as a way for women to ensure that their own domestic interests and relationships would be fulfilling. It also offered reassurance that any new woman to enter a household would be compatible with existent family members and would hold similar family norms, expectations and values.

31. Conversations with residents also emphasized that premarital relationships are not intended to afford men opportunities for casual intimate encounters, or for weighing marital prospects. The impropriety of men scouting for wives was noted on several occasions, and is illuminated by the comments of one participant who reflected, during her interview, on what she will teach her son about marriage as he matures:

I will teach [him], to find one woman and, in his heart, if there's another that wants to come then accept that but don't you ever go looking! [Chuckle] It's not his right to look.

32. This sentiment was endorsed by another participant who stated:

The biggest lie anyone could ever make, is to intentionally break a marriage vow. When people make commitments with each other, they should keep them. To me, it would seem like cheating on your wife to be out looking for another wife.

Reproduction and Family Planning

33. Big families are – and generally have always been – a defining feature and value of life in Bountiful and within Mormonism more generally.³ This point was reiterated in a number of different conversations with residents of this community. The objective of having many children is linked to the practice of polygamy in FLDS theology, where the most saintly men were permitted to take several wives so that that they could have more children than would be biologically feasible with a single spouse.

34. Several women in Bountiful have a plurality of children; many of those I met have five or six children, and some have 10 or more. At the same time, a number of women also have fewer children, say one or two. A couple of women also indicated that if a woman was faced with fertility problems and could not have children, this would not be held against her in her community or by her spouse, even though childbearing is so highly valued in Bountiful.

³ Campbell (2001) at 35.

35. Discussions with research participants about reproduction suggested that some women plan their families and pregnancies even though the FLDS has conventionally resisted contraception. In this connection, discussions with two midwives in Bountiful were illuminating. They recognized that childbearing and childrearing can impose a significant toll on women's physical and mental health. They thus emphasized the relevance of counseling their clients about birth control options. They gave particular attention to means that women could use independently, without needing to confer with a spouse. As one participant noted:

I have never had anyone say to me, "You shouldn't use birth control." But it's definitely implied. And it's, I don't think, I mean talking to my own husband, he would never feel like that was appropriate. Because of, I guess it's just not the natural thing. It's not what, I guess, we were designed to use or whatever. At the same time though, I think, a lot of women are not really able to communicate their feelings when it comes to [saying]. "Okay, I've had ten children, and I probably, have what I can take care of."

36. This same participant suggested that women tend to think about contraception more pragmatically than spiritually. Thus, while husbands typically do not wish to consider birth control options because this violates a religious principle, a woman might see contraception as a way to protect her own well-being, given the energy and labour that having many children demand. This point is reflected in the following comments:

It came to the point where, because of health concerns I just had to say, "I really can't see how I am going to handle the emotional aspect of being pregnant; it's just too terrifying to me." I said [to my husband], "You know, you'll have to cope with it, because I can't, I can't mate with you right now." You know? Even though I was nursing. I just, I [couldn't] take the risk.

37. Given these concerns, midwives spoke about advice they give women, often at their six-week postpartum check-up. A key theme taken up is what women might want to know about avoiding another pregnancy immediately. Health care providers may give information to women about the possibility of conceiving even while nursing or while practicing a rhythm

method of contraception. As one participant indicated, women might find it too difficult to maintain a harmonious relationship with a spouse if they feel they cannot risk becoming pregnant and are thus reticent to engage in sexual intercourse. In the result, some women resort to the option of using a contraception method “that their husband won’t know about.” As one woman indicated, “birth control that’s invisible” was valued since “you can protect yourself without making that decision together, if that decision can’t be made together.”

38. From my conversations with various women in Bountiful, it appears that while a premium continues to be placed on fertility and childrearing, mothers today are often described as more actively engaged in deciding whether and when to have children. Family planning might be based upon the use of medically-assisted contraception or, as some women called it, “natural birth control” (i.e., monitoring one’s own fertility cycle).
39. One woman I met stated that her fourth (and youngest) child was a “surprise”, but affirmed that there would be no further unexpected children. In this way she suggested that she would use a form of contraception to ensure she would have no further pregnancies.
40. Another women articulated the generational differences that characterize parenting now and parenting in her own parents’ time, suggesting that the demands on her are more onerous than those place on her own mother:
- I’m feeling that women are feeling, ‘I have to have less kids’. Like, I can’t deal with the same amount of kids that my mom had, [...] just because of the world that we live today. You know, we live in a really fast paced society. I mean a kid is in soccer and hockey, and you’re trying to keep up and one day you explode because you can’t communicate.
41. This same participant suggested that while family planning remains something “taboo” within inter-spousal communications in her community, some women recognize its value and significance for their overall health, and for the well-being of their children. She therefore stated:

[F]amily planning is getting more and more popular. [...] Birth control is very, very frowned upon and I've had many, many arguments [...] with my dad and, you know, the men who are in charge at this point about birth control. Because my thing is, would you rather have a woman that has two kids, raises those two kids, loves those two kids and is able to do extra things to feel good about herself, you know, and she lives 'til she's ninety? Or would you rather have someone who has ten kids and they're in the loony bin by the time they're thirty? You know we can't cope and we can't deal, you know? Of course they [i.e., the men] are like, "that's not how it is." Well, that isn't reality.

42. I have discussed issues of reproduction and family planning with a number of women during my visits to Bountiful. Based on these conversations, I would conclude that many women in this community do try to manage their fertility and make decisions about whether and when they have children. While this may involve "artificial" or medical birth control mechanisms (women did speak of diaphragms and oral contraceptives), many woman also placed great value on "natural" family planning methods (i.e., rhythm cycle).
43. Having said this, children in the FLDS Church are still considered a tremendous gift and blessing from God. Thus while it was suggested to me that being infertile would not be held against a woman, I do not have a good sense as to how a woman would be treated if she *decided* she did not want to have children. As far as I am aware, I did not meet any woman in Bountiful who was married *without* children. The only exception to this was one woman who got married during my visit to Bountiful. Furthermore, I met no woman who had children outside of a (state-recognized or religious/"celestial") marriage.

Intra-Familial Relationships

Parent-Child Relationships

44. From my research it appears to me that the division of labour within Bountiful's households tracks conventional gender roles. Most men worked outside of the home, and although many

women also were wage-earners, they are also generally responsible for domestic work, which includes raising children and overseeing their education, health and maintenance.

45. As I discuss in more detail below, women who work or study outside of the home often rely on sister wives or other female relatives for assistance with childcare responsibilities. But while different women might contribute to caring for a child, I have no doubt that children in polygamous families in Bountiful know precisely which woman is their biological mother and have a particular bond with her.
46. From my perspective, it seems that the most special and intense relationships within the families in Bountiful are those between mothers and their own children. Children are treasured in this community and I observed instances of mothers and their children sharing moments of everyday tenderness and care.
47. Because sister wives tend to share the work of child-rearing, children will often refer to all sister wives as "Mother". While a child's biological mother is known to him or her as "Mother", a sister wife is typically called "Mother [Name]", using the given name of that particular wife.
48. Although my observations lead me to believe that children have a special connection with and love for their own mothers, children often show deep affection for the sister wives in their respective families. For example, two women I met were sisters whose mother died when they were very young. They were thus raised by another woman to whom their father was married and as they matured, they came to see this woman as their own parent, and were as close to her as they had been to their own biological mother.
49. A similar message was conveyed by a participant who talked about growing up with a biological mother who worked outside of the home. She stated that she benefited from always having "another mother to come home to and check in with," who took care of her.

50. Children within a family born to different sister wives also often have rich relationships. I heard these children refer to one another as “sisters” and “brothers” even though in mainstream Canadian society, we would refer to them as “half-sisters” and “half-brothers”. Several women also indicated that they are “very close” with their siblings, even those with whom they do not share a mother.
51. However, it is probable that, as in all families, there is some sibling strife or rivalry in some of Bountiful’s polygamous families. As one research participant noted, being part of a large family with many children can easily result in a diminished sense of privacy and distinctiveness. This is reflected in the excerpt that follows:
- Okay the best things about being a child of polygamous relations? I would say you are never alone. I mean that’s good and bad. I was one of the older siblings [...] and I was always a role model and mentor for many of my younger siblings, which is also good and bad. Um, I have a sister who was two years younger than me but we both have the same mom, and we’re very close now. At this point in my life I have about eight sisters who are in their teenage years and more that are in their 20s and we’re all pretty close. [...] But growing up? [...] [M]y father always treated us as equals but like, he probably went to extremes in trying to make us all feel equal. My other sister from another mother, she had to always come with us just so she wouldn’t feel left out or anything. He might have been that way even if she’d had the same mom as I, but sometimes I just felt that she had to come just so Father could feel like he was being a fair parent or something, I don’t know. Sometimes I thought that.
52. Apart from relationships within particular families, my observations in Bountiful also reveal that, at the communal level, women have organized distinct measures to promote the health and well-being of children. For example, public health nurses from a nearby town come to the Bountiful Midwifery Centre and use this space to vaccinate children from the community. Moreover, women from Bountiful have worked with social service providers in town to organize drop-in play groups within the community for mothers and their preschool-aged children.

53. While my time in Bountiful furnished quite a clear sense of the typical nature of relationships between mothers and children, the nature of paternal-child bonds in this community is harder to establish. This was because during the days that I was in Bountiful, my focus was on interviewing women in this community. I therefore spoke with few men. Furthermore, because most men worked outside of the home during the days (and sometimes travelled for work, for example, if men were involved in logging or trucking work), I typically did not have a chance to see them for any extensive period to observe how they engage with their children, or to speak with them about this.
54. Based on my limited exposure to fathers' interactions with their children, as well as on conversations with mothers and with children (both on and off the record) about the paternal-child bond, my sense is that fathers take on a less affective role with their children and are seen primarily as providers. I believe that fathers have also traditionally been the link between the FLDS Church and the family, and historically played a key role in arranging marriages and selecting spouses for their children as they matured.
55. Although I had fewer opportunities for observing how fathers and children interacted, it was plain that when fathers were around, children – especially young boys – were extremely keen on having these men's attention and on spending time with them.
56. Many fathers were present at a Church "Meeting" I attended in 2009. Here, I noticed a number of families in attendance and the gender distribution seemed equal. The same is true of a "Children's Program" I attended (also in 2009), which involved a series of short dance and musical recitals led primarily by children from Bountiful. Finally, I noticed a comparable dynamic at a wedding reception that I attended briefly in 2009. At these events all families sat and participated together.

Intra-family relationships: Relationships between and among adults

57. Within a polygamous family in Bountiful, there are two key types of adult interpersonal relationships: those between a husband and wife, and those between and among sister wives.
58. Decisions within polygamous households in Bountiful relating to divisions of domestic labour are usually settled by sister wives. These choices are governed by the available time that a woman in the household has. For example, it is recognized that a woman who studies or works outside of the home will have less time to contribute to daily chores and childrearing, but is expected to contribute in other ways or at a later time in her life.
59. In addition, a woman who has just given birth will get a month "off" from her normal household duties, to get her bearings and become adjusted to life with her new infant. During this time, her responsibilities are taken up by other women in the household or in the community. This time "off" is recognized as an entitlement for all women, regardless of whether they are in polygamous marriages with sister wives in a shared household.
60. Divisions of domestic labour also seem to be based on the particular interests and skills that a woman has (such as cooking, gardening, tending to children, etc.).
61. Like decisions regarding household responsibilities, it appears that women in Bountiful who live together also take up the management of family finances. Wives thus convene regularly to discuss household issues, including money matters. While a husband is sometimes privy to these discussions, wives seemed to be the stewards of financial life. This is summed up by one woman who noted: "We get together and decide. The guy doesn't figure it out; he goes to work. The moms figure it out at night."
62. In this connection, women suggested that because they outnumber men in a polygamous family, wives usually can use this as leverage in budgetary decisions. Notably, when wives decide they wish to make purchases or assume expenses, this is typically realized, even in the face of a husband's reticence. This point is reflected in the following comments of two women I interviewed in Bountiful. A first woman indicated:

When we want something [it's] pretty hard for him to stand up to two of us so, if we could [sic] afford it, we can make it happen. And if it's something you know we want to do to the house. We say, honey, we're doin' this, right, okay. And so, it happens.

And a second woman stated:

I feel sorry for the guys. They're very outnumbered [chuckle] even if they're with two wives. They're very outnumbered.

63. Even when financial matters posed strain within a family, some women seemed to feel that they should address this on their own or with the support of sister wives, but not necessarily with their husbands. One woman thus indicated:

But as far as my stresses about my bills and money, I don't spend a lot of time conversing with him about that. If I feel like it's something that he needs to know about, I talk to him about it. Otherwise, we [i.e., the sister wives] talk to each other about it.

64. While many aspects of family life are taken up communally in Bountiful's polygamous households, it would appear that intimacy is understood as strictly confined within the husband-wife relationship. Women in Bountiful did not speak to me about how they share the emotional affection and sexual attention of a shared husband, although one woman did indicate that myths about "schedules" and rotations of a husband through his various wives could not be taken as universally true for all women. This woman resisted the formality of wives regularly "taking turns" with a husband, and thus stated:

[T]here were times when, especially as I got older and I, it became more difficult to conceive and there were more ladies in the family and that, then I would go to [my husband] and the two of us would plan a way for us to get together [...] for when it would work. [...] I did not like the 'turns'. When I first got married it was we each got a turn, you know, and it didn't matter what was happening, we had our turn. And I'm the one that broke out of that and said: 'I don't like this. I don't want it. I don't feel like sleeping with him tonight. I don't

want to be in there. I want to be with my baby. You go ahead and have my turn.'

65. Aside from physical and emotional intimacy, the one domain in polygamous households in Bountiful that husbands and wives regulated together without much involvement from sister wives pertained to the raising and disciplining of children. Even though, as indicated above, a child in a polygamous household could view herself or himself as having several "mothers" participating in his or her upbringing, major decisions concerning a child's health, education and discipline seem to be relegated to the authority of his or her birth parents. As one research participant told me: "[I]t's easier if each mother worries about her own children's needs. I mean, it's too big for the whole family to worry about every child." Thus, tensions may arise when a woman attempts to correct or chastise her sister wife's child.

66. This strain in lateral relationships among sister wives arising when one is perceived as overstepping her bounds vis-à-vis another's children is reported also in the literature on FLDS families, which posits that because children are so important and often, so numerous, in these families, they can become a source of conflict and competition among wives:

Wives do not always have the option of child care but most depend on one another – even if they do not like one another or if they disagree with how their children are being treated. In some cases, the way children are disciplined and dealt with by other wives becomes a lightning rod for family stress.⁴

67. Apart from conflicts over disciplining one another's children, women identified two other potential sources of tension among sister wives. A first related to jealousy over a shared husband's time, affection and resources. This challenge was noted by most of the women I interviewed in Bountiful. It is also noted in scholarly literature that has studied relationships among sister wives in FLDS communities.⁵

⁴ Altman and Ginat (1996) at 373-374.

⁵ See Altman and Ginat (1996) at 163-169 and 353-357 for a discussion of how the phenomenon of jealousy among sister wives is managed and tempered within polygamous fundamentalist Mormon families.

68. Women with whom I spoke in Bountiful identified several different ways of coping with emotions of jealousy. For example, one research participant stated that, throughout her ten-year plural marriage, she's "learned how not to be jealous", primarily by telling herself that she is "his [her husband's] favourite."

69. A second source of tension among sister wives identified by women in Bountiful pertains to the fact that sharing a husband usually brings with it sharing a household and its common space with other women and their children. The pressures such a situation imposed were noted by several participants. One woman, for example, intimated that the requisite "sharing" in polygamous households could be a challenge:

Well there's always the inevitable 'my space, your space', stuff like that. You have to respect each other's space. You have to respect each other's feelings. And all of a sudden you go from being the only one having to share and it's hard. It really is hard. But, but if you really believe that that's the way that, that's the way that you can get to heaven and stuff like we do, then it's worth it to us. And at times it doesn't feel like it's worth it. But, no matter what situation we go into, no matter where you are in the world, you're gonna have those problems with someone.

70. Another participant addressed the relevance of having at least some of her own personal space (i.e., a bedroom and bathroom) in her household, but noted that some women would insist on having an entirely separate house:

It's nice to have your space, your own room. I do share a kitchen but I have my own room, my own things. [...] I'm willing to share everything else, but [I want to] have my own space, my own room and bathroom. Other than that, some people would prefer to have their own house but I guess it just depends on the kind of person you are.

71. And a third participant compared the stresses of polygamous life to ordinary cohabitation or shared living arrangements, such as those encountered by college students:

I compare it to people who are living in dorms together. If someone's messy and you're a clean person it's just really hard to live together. I think that those kinds of situations are when there's a big clash in the relationship.

72. Given these realities of cohabitation, families with the requisite resources might try to avoid having incompatible plural wives live together. One participant reflected on this, stating, “[G]rowing up, my father had two wives but we never ever lived together, we never lived in the same house, we lived in separate houses.” Another woman suggested how her relationship with her sister wives improved after they moved from a communal home to individual households:

R:⁶ What about the biggest thing you would lose [if you lived monogamously]?

P: My sister wives, their children. I really do love them.

R: But you all have different house...

P: Which is good, I mean, I think that's the only way to live, in my opinion.

Because we lived together for six years in the same house.

R: And how was that?

P: Oh, a lot of trials, [chuckle] we did pretty good.

R: What kind of trials?

P: Oh man, three different women with strong opinions, right? And different ways of teaching their children. And it's hard, but we did it. We managed.

73. Although challenges to polygamous life seemed to have been experienced by a number of women, participants in my research also cited several advantages to having sister wives. Specifically, participants noted that a genuine sense of solidarity and sorority developed within most relationships between women who shared a husband and a household. Women noted specifically the division of labour that existed within households according to the specific tasks that women enjoyed or at which they were particularly skilled. Furthermore, having sister wives enabled women who need, or who choose, to work outside the home to

⁶ In all cited passages in this affidavit, the initial “P” stands for “participant” (i.e., a person interviewed in Bountiful) and the initial “R” stands for “researcher” and represents my own words in the interview.

do so, given that their household partners could take up the work of managing the home, meal preparation and childcare when a working or studying woman was physically absent.

74. Several women noted that the primary benefit of their relationship with sister wives is the companionship that this brings them. In particular, for many women it seemed that their relationships with their sister wives were just as valued and important (but for different reasons) as their bonds with their respective husbands. Women thus referred to their sister wives as their “best friends”, “life partners”, and as not being able “to imagine life without them.” Two women made particularly illustrative comments. One stated:

My sister wives are like my very best friends. [...] I do more things with my sister wives than I do with my husband. I'm with my sister wives 24/7. [...] Sometimes I feel like I'm more married to my co-wives than I am to him!

75. Another woman, speaking about her emotional connection to her sister wives, indicated:

It's kind of like in a monogamous relationship where you and your husband are really close. Well, a lot of us get actually that closeness with each other that you would have with your husband. [...] We know everything about the other person. Feel what they feel, we think what they think.

76. I encountered the starkest example of the proximity that sister-wives might experience when I met two women who shared a household and were raising their twelve children (six apiece) together. These women were married “celestially” to their husband, who was the father of all of their children. Neither of them, though, had a formally recognized marriage to this man.

77. After cohabiting together with their children for some time, they decided that their lives were so intertwined economically, socially and emotionally that they should marry one another. These women saw this formal marriage as a logical progression in their relationship, given that they were already essentially domestic partners. They have not alluded to whether their relationship has a sexual component but indicate that they cannot be intimate with one another given that homosexuality is not accepted within the limits of their faith.

78. These two women were eligible to marry one another since, although they had religious marriages to the same man, they were civilly single. One journalist has posited that this marriage is a sham designed to get around immigration rules.⁷ However, the couple's interview suggested a genuine shared domestic existence that bore the conventional elements of marriage:⁸

P #1: [W]e were [our husband's] youngest wives.

[...]

P #2: He was very busy in the Church. So we became very close friends with each other.

P #1: We didn't have a lot in common with the other ladies. [...] We only became friends because he stuck us together and said, 'okay you guys take care of each other!'

[...]

P #2: And I would say that we grew together. And I go to work and support her and she tends my kids. And we really and truly and honestly are partners. [...] Honestly there's not any [*sic*] two ladies that live as a couple as we do.

P #1: Our finances are intertwined.

P #2: You could never divide our bills, for us to divide our bills and our income we would have to get a divorce, to divide our bills, because all of my credit cards, all of our bills are together so much that I wouldn't know where to start if we were separated. To the point where we are a couple. Our kids would be lost without each other.

79. My research in relation to adult relationships in Bountiful has also explored the possibilities for women of leaving unhappy marriages and domestic lives. Discussions with research participants included questions about how women might cope with difficult spousal relationships. Specifically, I asked all participants how common it would be for a woman

⁷ That is, she suggests that the marriage was prompted by the fact that one of the wives, an American, could not be sponsored by her Canadian husband given their illicit polygamous marriage, so she opted to marry formally her Canadian sister wife to achieve this. Bramham (2008) at 320-322.

⁸ Cossman and Ryder (2001).

dissatisfied with her marriage to leave her spouse or the community. I also asked participants to identify the most important challenges such a woman would face.

80. Responses to these questions varied. Some participants indicated that women in unhappy family relationships manage this by discussing their troubles with church leaders, who might then place them with a new husband and family. Women might also decide to leave a marriage without such initial counsel, and several women have done so. Yet it was acknowledged that exiting one's marriage typically also means leaving the whole community behind.
81. While some participants indicated that women who leave the community are welcome for return visits, one participant who *had* left her marriage (by divorcing formally) and the community suggested otherwise, stating that someone in her situation is "not welcome to come back and visit" and is "just considered an apostate."
82. I did, however, see this particular woman at a wedding celebrated in Bountiful in June 2009. She was invited as a guest, and stayed in Bountiful over the weekend of the event in the home of a family member.
83. Overall, my impression is that leaving a harmful or unhappy domestic setting in Bountiful is possible. There is even one reported judgment pertaining to a custody dispute between divorcing spouses from Bountiful.⁹
84. However, exit from marriage and the community is difficult. One participant indicated that although she had been aware of shelters and other resources for women in tumultuous conjugal circumstances, she considered that these "weren't for us... [...]. We lived apart from that; it didn't affect us."
85. The hardship of exit for Bountiful's women mirrors that which might be encountered by many women leaving a marriage, even if monogamous, or a community. This point is

⁹ *Blackmore v. Blackmore*, B.C.J. No. 2571 (2007) (QL).

explored thoroughly in existent literature,¹⁰ and was brought home in one particular exchange with a woman in Bountiful. The question, “If a woman wanted to leave a plural marriage, what would her alternatives be?” was put to a focus group of women whom I interviewed altogether. A woman within this group responded by turning the question on me, asking: “Well, what would *your* alternatives be?” I answered by noting that my own alternatives to remaining within a difficult marriage would be undesirable, because of the consequences for my children, and because of financial and emotional challenges. In reply, the same woman who’d asked the question stated flatly, “Everything you said, it’s exactly the same for us.”

Women’s Self-Expression, Self-Fulfillment and Contributions to Family and Community through Work and Education

Women’s Appearance and Dress

86. Some participants in my research recounted that, after the Split within Bountiful, they began to see themselves as having choices that they did not previously have in areas besides marriage. One primary way of expressing this newfound freedom is through women and girls’ attire. Traditionally, women in the FLDS Church have held steadfast to the principle of modesty in dress. They have thus consistently worn handmade full-length dresses and skirts, and long-sleeves. In addition, women did not cut their hair; they instead let it grow extremely long and usually kept it tied or braided.

87. Within Bountiful today, a variety in dress habits is evident among women. While a large number of women continue to dress conservatively, many girls and women have also adopted a more “modern” and “mainstream” look. Walking around this community, one might see girls and women in jeans, t-shirts, “hoodies”, V-neck shirts, and skirts shorter than most FLDS women have traditionally worn. These girls and women may also cut their hair and wear makeup and jewelry.

¹⁰ See Malik (2006) at 216; Shachar (1999) at 100.

88. Although girls' and women's changing appearances are generally accepted, based on my observations and conversations with residents of Bountiful, it seems that these transitions in dress have caused some anxiety and friction within the community. More traditional women have hinted at some disapproval in regard to modern dress styles in the community. The concern here is that contemporary clothing and accessories are less consistent with the principle of modesty that has conventionally characterized women's appearance in FLDS communities.
89. Changes in dress patterns among women seem attributable to a number of factors. Some women suggest that this decision was prompted by an effort among Blackmore followers to distinguish themselves from the more traditional Jeffs group. Some others indicate that they have changed their dressing and hair styles simply because they find this new look more comfortable. Last, I have been told that modern dress might also be taken up in an effort "not to stand out" within mainstream society. In this connection, it was suggested that dressing in jeans and t-shirts was a helpful way to avoid being identified as a "plyg" outside of an FLDS community. This is a pejorative term used to refer in a derogatory way to polygamous people, and it is sometimes heard in areas where plural marriage exists.
90. While such changes in women and girls' dress within Bountiful are apparent, some women are committed to dressing according to conventional community norms. Although they seem to understand the interest among some women of dressing in a more modern manner, they also seem a bit apprehensive that this tendency will erode the principle of modesty that has been central to expectations about attire in the FLDS Church. Thus, the way that women dress and appear seems to result from careful reflection. A good example emerges in comments that one participant wrote out and sent to me by email after I conducted interviews in 2009. She stated:

Women are highly adaptable and versatile people. Throughout history we have been able to play whatever role life has handed us. Remember Joan of Arc, who led an army across France, the pioneer women who crossed the plains, and Amelia Earhart with her extraordinary desire to fly? We can do anything, and

yet so often, especially in this modern, everyone is equal world, we forget to celebrate our womanhood.

For me, wearing a dress is a display of femininity. God made men and women different for a reason, so why not enjoy being what you are? I feel beautiful and feminine in a dress, so as a rule, I wear a dress.

I also believe that seeing a woman in a dress brings out the protective, manly instincts in our male counterparts. Feminists may argue that skirts put women at a disadvantage, but I don't believe it's wrong for men to act like men and women to act like women.

91. Additionally, some participants have observed a revisionist trend among some young women, who have returned to the community's traditional style of dress of long skirts, long sleeves and long hair. This has been accompanied by a renewed valuing of – and interest in – plural marriage. One woman thus stated the following in her interview with me:

Now some of the girls are getting attention for wearing old-fashioned dresses. A couple of the 16-year-olds wore hoop skirts to the Creston hockey game! Their friends from town think they are just the coolest people ever. [...] I am happy to see that our big kids are not ashamed of our way of life. Many of our young couples today want to remain monogamist, but we have teenage girls who now want to live plural marriage when they are old enough. I strongly desire to preserve our culture, and I take heart in these girls who are catching the vision.

92. According to this participant, girls who were “catching the vision” had seen many of their own mothers as happy plural wives, and are therefore interested in taking up polygamous marriage themselves. At the same time, these young women seem simultaneously drawn both to tradition and to a lifestyle that involves going to hockey games and socializing with friends from Creston, the nearby town.

93. As indicated, the foregoing observations about changes in women's attire in Bountiful pertain to the "Blackmore side" of the community. While affiliates of Jeffs seem more conservative in terms of customs, including dress, I am told that women within this side of the community also have more choice now than they have in the past in regard to marriage and, as indicated above, reproduction.

Women's Education and Work outside the Home

94. Accounts women in Bountiful shared with me indicate that many of them juggle responsibilities that require them to move in and out of their community on a regular basis. Most women I met were either employed outside the home or pursuing college programs. Several worked in Bountiful, most notably as teachers in the community schools, as care-aids for the dependent or elderly, or as nurse-midwives. Some also worked outside of Bountiful, for example, in stores or hospitals in nearby Creston or Cranbrook.

95. Participants alluded to the financial independence that pursuing studies and employment could offer. They made statements like:

I make my own money and pay my own bills. I don't really give him any, [and]

I don't take much money, because that way I'm not dependent.

96. *Emotional* independence and strength also was linked to the value of work, as women now saw this as something that should yield a particular benefit *for them* whereas traditionally, work was understood as serving to promote a common (patriarchal) good. This is illuminated in the following excerpt from a research interview:

P: I don't think I ever heard in my life, "Go for a walk for you"; "Feel good for you"; "Be beautiful for you." I don't ever remember that being important. Maybe it is. But for me it wasn't ever. It was, "Get up, today we're going to work in the community garden; we're going to do this for 'us', we're going to work together for 'us', we're going to be happy for 'us', we're going to make breakfast for 'us'." There was never that, "Go find some time and relax for you."

And now that I'm, the more I study or I look at depression and stuff like that, I think that women really need to feel important in themselves.

R: [...] Who is "the us"?

P: [I]n my growing up years that was everyone, like the FLDS. And we definitely did work for a common cause. [...] It was really designed like a communist society where we did work for the common good of everyone; no one really lived above anyone else. Like I don't remember my mother saying, "We're going to go get our nails done for us." It was, "We're going get up today and clean the house for father," or "We're going to help clean the community for our prophet."

97. As Bountiful has no postsecondary educational facility, women from this community who pursue college or university programs must do so elsewhere. From the various accounts I heard, it seems to me that such postsecondary schooling happens in towns where local residents would be familiar with the FLDS Church and with polygamy. For example, women spoke of studying in Creston and Cranbrook, B.C., which are both in close proximity to Bountiful itself. Others studied at Southern Utah University, that is, in a state historically associated with plural marriage where the FLDS Church retains a large following.
98. In connection with this, participants noted that women will often seek to remain close to home and family while they obtain their degrees, and thus opted to study in nearby towns or in Utah. At the same time, it was suggested that women would ultimately go wherever necessary to obtain the schooling that they sought to pursue. As one participant stated: "[Women will go] wherever they need to go to get what they want. Like if you want to be a dentist you can't just stay in Cranbrook, you need to go somewhere else." However, it was acknowledged that it is "not yet" common for women from Bountiful to go to large universities in urban centres.
99. Moreover, of the participants who had pursued college or university studies, all had taken up traditionally feminine professions, such as teaching, nursing, midwifery or care-giving for the elderly or infirm, and most had married before entering their postsecondary programs. When

asked about the choice of program that women pursue, allusions were again made to women's interest in remaining in or close to Bountiful. One participant noted:

Well a lot of it [i.e., choices about education], too, is that it's based on something they can do around this area. If they want to stay here they need to choose something they can do around here in the Creston Valley area.

100. Another woman stated:

I wanted to do something that was non-traditional because of [...] that stereotype that, when people look at me I didn't want them saying, "Oh, you just went into education because you were told to or something." [...] But I always came back to education because that's what I care about, that's what I'm interested in. And, also when you're part of a community then you want to help, you know? You want to contribute to that community in some way that's going to benefit all the people you care about and all those involved. So, I felt like there was a need for me to go into education because there is a need for educators [...]. But I had to face that stigma a lot, of people saying, "Oh, you just went into education, why couldn't you branch out?" It's like, that's what I wanted!

101. Since marriage in Bountiful still seems to happen when spouses are young – at least by current Canadian standards – it appears that women who want both to marry and to pursue postsecondary education must seek these things in this chronological order. Bountiful women in college are thus usually already wives and mothers. One woman acknowledged how difficult pursuing higher-level learning, while remaining responsible for a family, could be:

I don't feel like [I] was hindered in any way except for the fact that, I could see how much easier it would have been if I would have just gone to school first, before I had children. I remember going to school and just, you know, anybody that was taking the nursing program or the midwifery program, before they had a family... I mean their responsibilities were so much different than mine. But I met people in both my classes that have some more responsibilities too.

102. Participants who studied and worked outside of Bountiful seemed to have the greatest scope for exchange with non-FLDS people in nearby towns and communities. Although many women, even those who were not students or in the paid workforce, regularly travelled to local towns for various reasons (e.g., shopping; using public services like hospitals or post offices; or taking their children to extracurricular activities like hockey and dance lessons), those who were in school or who had a job in one of these towns seemed to have the greatest potential for ongoing dialogue and rapport development with people who were not affiliated with Bountiful or the FLDS Church. Accounts of participants indicated that many of these encounters were positive and enlightening. Some, however, were more negative, and participants sometimes attributed this to the hostility and stereotyping against polygamy that exists, and which – in their view – undermines fundamentalist Mormons.
103. Some women experienced prejudice in their college classrooms. This is illuminated in one account from a woman who indicated that at her educational institution, she was pigeonholed as a resident of Bountiful on account of the way she dressed. She thus had students and teachers ask her whether she knew that “it’s against the law to live polygamous [sic].”
104. Other women have encountered bias in their work outside of Bountiful. One participant, employed as a cashier in a Creston supermarket, indicated that while her manager and co-workers were generally accepting of her lifestyle, customers might take a different view. She indicated that some identified her as a polygamist because of her style of hair and dress, and would refuse to enter her checkout line. On one occasion, which occurred while she was pregnant, a male customer sardonically asked whether childbearing “was all ‘you people’ [i.e., FLDS plural wives] are good for.”
105. For another participant, the stigma and scorn she faced outside her FLDS community was an impetus underlying her decision after the Split to dress in modern clothing. In her words:
- [B]efore I made the choice to dress how I want and do what I want like, I’d go into town and I’d be from a plural marriage and I’d be uncomfortable. [...] But then I started to dress how I wanted to and basically no one would even turn

their head anymore. [...] [I]t would be hard just to go into a grocery store. Like there's a lot of rude people in the community. Like I just noticed a world of difference in how people treat me now. There's a lot of ignorance.

106. Some participants claimed that their treatment outside of their community also had practical consequences; specifically, it caused uneasiness about accessing resources outside of Bountiful. One woman recounted anecdotal knowledge of families' apprehension about seeking medical care, particularly prenatal and birthing care, in the local hospital fearing they would be subject to scrutiny and criticism. Access to "outsider" services could be especially intimidating if these services drew attention to family and community life in Bountiful. This perception is represented in the following excerpt from my interview with this particular participant:

P: [F]or example, if a couple that wasn't in our community wanted to go for marriage counseling, or something, then they would go. Nobody would ever do that from here, because of what they will say, "Well no wonder you have problems; you have two wives!" But that's not true. Because there's [sic] many couples that have problems in their relationship.

R: What if a couple has a problem? How is that managed?

P: Well, they try to manage it within themselves. [...] But there's usually, like, we have a, man who is, we may call him the Bishop, or an acting elder, or something within our community, and we would go and talk to him.

107. This point was affirmed in another interview with a woman who alluded to the ways in which women might manage mental health challenges:

Definitely, if you're living a lifestyle that is illegal then you don't want to go to counseling because you might say, "Well she [i.e., my sister wife] made me so mad today, she didn't get up and help with the breakfast." And they're going to say, "Well, why are you there? Why do you live with five other women, married to the same man, if it drives you crazy?" [...] Whereas you, that's kind of what you've chosen and you want to learn how to deal with it better.

108. Yet while participants gave some accounts of difficult encounters with “outsiders”, many spoke of harmonious relationships with the people of nearby towns. As one woman stated:

Creston is a small town where everyone knows everyone and if you're in a traditional FLDS dress the second you go into Creston you're from Bountiful right? And the people there have always been so good to us. Like, there are a couple that have little issues, but pretty much in general people have been so good to us; in being fair and treating us like people rather than criminals. So I never once felt like that I couldn't go somewhere and get help, or go to the doctor, you know.

109. Another woman who studied in Creston spoke of the intrigue, and ultimately, the acceptance, that her lifestyle generated among her classmates:

When I first started college I was a little bit, I was kind of drawn back. But then I got thinking, 'I am who I am, and I can't change myself to please everyone in the world,' and so I just started to be myself. And actually more people accepted me for who I was. Like one lady said, “Who has your baby?” when my little boy was younger, and I said, “Oh, my sister wife”. I just said that. And she said, “I envy you, I envy you. I struggle every morning to find a babysitter. You have these wonderful support systems and I envy you in that way.”

110. While visiting and researching in Bountiful, I also had opportunity to see and learn about a number of examples of the ordinary, ongoing contact between community members in nearby towns like Creston. These examples, listed here, illuminate the different ways in which people outside of Bountiful interact with community members. They also reflect a sense of mutual acceptance among both groups:

- One midwife from Bountiful told us that she does rounds in the Creston hospital in the prenatal ward and sees patients from outside her community.
- Another midwife explained that she sees patients from Creston and delivers their babies at the Bountiful Midwifery Centre.
- While in a Creston café, I saw teenagers my research assistants and I recognized from Bountiful who had come in to enjoy an afternoon outing together.

- While in a Creston supermarket, my research assistants and I ran into a woman from Bountiful doing her groceries.
- Traditional FLDS followers who operated a business in Creston spoke highly of Creston residents, stating that their business was actively supported even though clients know of the owners' affiliations with Bountiful and the FLDS Church.
- Some Bountiful residents told me that when Mr. Blackmore and Mr. Oler were arrested in January 2009, the local Creston police did not want to lay the arrests themselves, and the RCMP was thus called to do this. This is because local officers felt an affinity to Bountiful, and believed their good relationship with the community would be undermined if they had to arrest Mr. Blackmore and Mr. Oler themselves.
- In September 2009, I published an editorial about Bountiful in the *National Post* that was accompanied by a feature story written by Brian Hutchison, a *National Post* writer. After this was published, Mr. Hutchinson forwarded me an email he had received from a reader who indicated that she was a Creston resident grateful for these stories about Bountiful. She stated that Bountiful's residents are generally peaceful, supportive of local businesses, and maintain harmonious relationships with people in nearby towns. Given this, she did not feel that conventional negative portrayals of FLDS members in Bountiful were accurate or fair.

Perceptions of Formal Law in Bountiful

111. Through my research in Bountiful, I have studied the everyday experiences that a woman in a polygamous marriage might encounter. Yet, as a jurist, my research has also deliberately integrated inquiries that pertain to formal law. Specifically, through this work, I have garnered some appreciation for how residents in a community like Bountiful, renowned for accepting and practicing plural marriage, may perceive the state's legal approach to polygamy.

112. I acquired this knowledge through research interview questions that aimed to assess participants' understanding and evaluation of Canada's criminalization of polygamy. Based on these discussions, it is my impression that, at least for the women I interviewed, the prohibition of polygamy will not be an effective deterrent in this community.
113. For some woman, this is because polygamy a deeply ingrained part of their cultural, social and religious way of life. As one participant stated in response to a question about what the relevance of decriminalizing polygamy would be for Bountiful's residents, "I don't feel it [i.e., decriminalization] would necessarily change it [i.e., polygamy] that much because people are still living it and practicing it and not necessarily because it's against the law or not."
114. Another woman indicated: "I grew up knowing that polygamy was in my life, and it's part of my religion so I mean, there was nothing that was going to stop me from doing what God wanted me to do."
115. In the same vein, a different participant commented: "It's not gonna matter if they decriminalize it or not. [...] I mean, in my mind, that's how I live."
116. Some of the women whom I interviewed seemed to confound the issues of decriminalizing and legalizing polygamy. Specifically, some did not seem to appreciate that decriminalizing polygamy was not synonymous with the legal recognition (i.e., acceptance) of plural marriages. Thus, some women did not fully appreciate that even if polygamy had no criminal penalty attached to, a plural wife likely would not be recognized as her husband's legal spouse.
117. Nevertheless, many women *did* understand the difference between decriminalization and legal recognition. For example, some noted that while they hope polygamy will be decriminalized, they are less interested in state recognition of the practice. This sentiment emerged several times during interviews, as in the following comments of one participant:

I don't really think [polygamy] should be, not illegal. But I think it should be decriminalized. Yeah, I think that, because if you made it legal, if you made plural marriage legal [...] all of a sudden all these guys might start getting all these [wives] legally. [...] [S]o all we want is, we just want them to stop treating us like criminals.

118. Furthermore, it seems that some residents of Bountiful previously lacked information about polygamy's legal status and were unaware of its prohibition. As one participant stated: "I honestly was not aware it was criminal until a couple of years ago. [...] Because, you know, they had a raid, they gave the kids back so you just said, 'Okay, it must have been okay.'"
119. However, all of the people with whom I spoke understood that this practice is currently illegal and carries a threat of a criminal sanction. This is likely as a result of criminal investigations and charges recently brought in the community.
120. As indicated, most participants suggested that polygamy will likely continue in Bountiful despite its formal illegality, given the practice's roots in FLDS religion and culture. This does not, however, mean that formal law is irrelevant in this community. That is, while community members are not so deterred by the criminal law to reject or to cease practicing polygamy, many expressed anxiety and regret over the prospect of being branded a "criminal". For them, it seemed that the potential criminal penalty attached to a successful prosecution mattered less than the everyday stigma that they bear on account of a criminalized lifestyle.
121. Some women thus reflected on the relief they would experience from decriminalization, in particular, to live without the stigma of being branded a "criminal". They made statements about the benefits of decriminalization such as, "I wouldn't have people looking down on me."; and "We're upstanding citizens you know. [...] Who wants to be a law breaker?"

122. Other participants believed that decriminalization would foster broader social acceptance of their lifestyle and would reduce the hostility they sometimes encounter outside of Bountiful. One participant thus indicated, "People might like us better; [we'd] have way more friends." Another stated, "if we weren't breaking the law, probably a lot of people's opinions would be 'that's just their lifestyle, leave them alone.'" According to a third woman, "As a mother, it [i.e., decriminalization] would have been nice. Because it's really hard not to be able to say, 'I have a husband.' It hurts."
123. Some participants narrated incidences of having been spat on and verbally assaulted on account of their appearance, which associates them with the FLDS Church and with polygamy. They believe this abuse would cease if polygamy were no longer a criminal act.
124. In a similar vein, a significant number of women articulated their concerns about the potential legal link between criminalization and child protection. They worry that if they or their husbands are charged criminally, or even suspected of a criminal offence, their children will be apprehended by the state's Child and Family Services branch. In this connection, women referred frequently to the taking into custody of over 400 children at the FLDS Yearning for Zion congregation in El Dorado, Texas in 2008 following unfounded allegations about systemic child abuse in that community. Many of Bountiful's residents have family members in El Dorado who were directly affected by this series of events. They have thus been anxious about the possibility of a similar child protection intervention occurring in their community. This sentiment was captured in the following comments of one participant:
- [W]hat happened in Texas, that would be the worst thing that's ever happened. Because in this situation, the children are everything. And you don't focus on the husband, or even the wives, as much as the children. They're your comfort and your job, your everything. Everything you do is for these children. So if you lose them it's like taking your life away.
125. Thus, for most of the women I spoke with, the implications of polygamy's criminalization are felt at the level of being stigmatized or ostracized socially because of a

prohibited lifestyle, and in connection with a fear that this prohibited lifestyle might one day translate into the loss of their children to child protection workers.

126. In relation to such anxiety about social stigmatization and ostracization, my experience in Bountiful also indicates that some women are apprehensive about obtaining services that would draw attention to the polygamous nature of many families in Bountiful. That is, most community residents have no hesitation about accessing what might be termed “uncontroversial” services outside of their community, such as shopping for groceries or gardening supplies, or bringing their child to a doctor for something physical (e.g., during my first visit to the community, one woman who participated in my research brought her young son to the Creston Valley Hospital after he fell from a tree and broke his arm). But where required services might raise questions about a polygamous lifestyle, I perceived some apprehension, and this has resulted in some insularity for residents of this community.

127. For example, in her autobiographical account of life in Bountiful, Debbie Palmer recounts the story of the labour and delivery of her first child at the Creston (Valley) Hospital in 1972. Palmer describes the emotional pain she experienced when her polygamist husband did not accompany her to give birth, and when he did not visit her and her baby in the days following the birth at the hospital. She also felt some disappointment and embarrassment when she refrained from listing her husband’s name on the birth record as the infant’s father. Her story thus suggests that, at least in the past, polygamists in Bountiful would have deliberately provided inaccurate information about family relations on hospital records, to avoid suspicion and possible prosecution.¹¹

128. This narrated example offered in Palmer’s book resonated with the comments of one research participant who shared her anecdotal knowledge of families’ apprehension about seeking medical care, particularly prenatal and birthing care, in the local hospital fearing they would be subject to scrutiny and criticism.

¹¹ Palmer and Perrin (2004) at 335-336.

129. In other interviews in Bountiful, participants suggested that services such as marital or individual psychosocial counseling outside the community would never be sought out by residents, given worries that those providing care or treatment would attribute any emotional or psychological challenges to a polygamous lifestyle.
130. This point is made plain in passages from research interviews reproduced above in this Affidavit (see paras. 106 and 107). Such comments illuminate the fear that any difficulties a woman encounters in her family life would be singularly attributable to polygamy, and thus would be presumed as a naturally derivative harm from this way of life. There is thus a perception that a woman in such circumstances (a) would not be taken seriously or carefully listened to; (b) would be contemptuously looked upon as the maker of her own misfortune; (c) would be discussing matters that a “mainstream” counselor or care-provider could not understand; and (d) would be discussing matters that a counselor or care-provider might report to law enforcement authorities and subsequently held against her or other community members.
131. One research participant also suggested that if abuse or violence were present in a conjugal union, a spouse would be reluctant to seek out support and care. As indicated above (para. 84) this woman stated that while women in Bountiful were aware of services and shelters for victims of domestic violence, they felt that these “weren’t for us.”
132. It is possible that women in Bountiful have traditionally chosen not to seek out such domestic support or counseling services because this is seen as inconsistent with community norms. Yet it is also possible that such services are not accessed on account of a fear that abuse allegations would trigger criminal investigations and prosecutions related to polygamy.
133. In connection with this, a situation that struck me while researching in Bountiful involved a severely mentally disabled girl in this community. I met her during my first trip to the community, and spoke at length with an elderly woman, who I believe was her grandmother, charged with looking after the girl while her parents were at work. It did not appear to me that this girl was obtaining specialized care for her disability. If this was the case, it may have

been because of a fear of stigmatization associated with the criminalization of polygamy, or it might be attributable to other factors.

134. Thus, it appears to me that Bountiful's residents will have some apprehension about seeking out and obtaining social or medical services for difficulties that may be perceived as linkable to polygamy. They seem to perceive such a move as potentially increasing their vulnerability and the risk of coming to the attention law enforcement authorities.

135. Although I observed a perception of vulnerability among some community members in connection with law enforcement, none of the women I met or interviewed expressed any fear or worry that they, themselves, would ever be charged or incarcerated for being a plural wife. Rather, they seemed to believe that any prosecutions on the ground of polygamy would be against "their husbands".

136. This sense of immunity to the criminal law that many women appeared to have – even in the face of gender-neutral language in s. 293(1) that ostensibly renders them just as susceptible as any man to a prosecution for polygamy – seems fuelled by historical interactions with law enforcement personnel. For example, one woman explained that when two residents of Bountiful were arrested in January 2009, the arresting officers told her explicitly not to worry since that they were not there for her and that they would not come for "the ladies."

137. But even though they did not fear being personally picked up by the police, the January 2009 arrests were not a relief for the women of Bountiful. Rather, many found their treatment undignified by arresting officers that day. This sentiment emerges in the comments of a participant, submitted to me via email:

The greatest hurt of all came from [sic] the RCMP on the day of [...]’s arrest. I was outside watching [...] give my daughter a ride on the snow mobile when the police arrived. They parked just down from the driveway were [sic] I was standing. They talked a little while. Then [...] and two men walked up the

driveway and went to his room, while a few others walked to the back of the top house. By then [my sister wife] had joined me at the driveway. We watched as [...] came back out of his room and headed to the officers [sic] vehicle. We were both alarmed and extremely frightened when they started to frisk [...] and put handcuffs on him. Ignorant of what was happening and scared to death [my sister wife] asked the other officers who had gone to the back of the top house and were now heading down to their vehicle what was happening. They looked at her and simply said, "you will have to talk to [another woman in Bountiful]," then left with [...] in their vehicle. You cannot imagine how offended and angry I was.

138. For women in Bountiful, then, the possibility of their own criminal prosecution does not seem to be a preoccupation; rather the concern seems to be about whether their spouses will be charged and convicted, and this may be because of legal authorities' conduct and interactions with the community.
139. This is consistent with other incidences shared by different women, who spoke about law enforcement agents coming to Bountiful in recent years in an effort to gather information about the paternity of different children. For these women, such exercises seem to be taken as evidence that state officials are primarily concerned with male polygamous practices.
140. During conversations with participants about their perception of Canada's criminalization of polygamy, several also noted their perception of an inconsistency between this legal approach to plural marriage and ongoing practices tolerated by law, such as adultery. The following comments, each from a different participant, reflect a perceived incongruity between on one hand, legal and possible social acceptance of plural *sexual* partners, and on the other, a firm juridical rejection and sanctioning of multiple, simultaneous *conjugal* relationships:

- You know, even polygamists aren't the only ones, so how could you ever say that polygamy is illegal with the way this world is? Women have affairs all the time; men have affairs all the time. So I don't think that polygamy should be legal, I feel like it should be decriminalized.
- My biggest fear isn't that they'll take my kids away from me, but they'll put my husband in jail for polygamy because he's married to more than one wife. Well he's not really. I'm not even married to him, not legally: I can't be. He can't claim me, he can't claim my children. [...] All he did is just break the same rule as every other man in the world that has no [legal] relationship with their [*sic*] [...] wife. If so, can they put him in jail for that? He's the same as all those other guys except he takes care of me. He takes care of the kids.
- [Y]ou could say, [...] every guy in the whole nation is living in polygamy, because you hear all the time about people taking on other wives and stuff like that. Is that, different? The only difference is, I know about it, in my opinion.
- I don't feel I'm breaking any laws. Because you go out in the world and there's ladies sleeping all around with whoever and the men aren't caring for their kids. And here I have children with this man, [...] and it's no different than ladies out there going around sleeping with whoever they want.
- If a man out of our religion decided to have another relationship, would have a one-night stand, no one would care. I know that. I was in town about a year ago, where I met a friend who told of her daughter, not associated with the FLDS, who has three children, by three different fathers. She and her children are being supported by the government through social services. And that would not be acceptable among our people. But if that were *us* they would have a royal fit!

- [W]omen everywhere choose harmful situations. Like women in abusive situations? [They] go back nine times out of 10. [...] We know why they go back. We choose to put ourselves in situations and the law can't change that, the law can't tell me I can't go back to an abusive situation. And that's how polygamy is; like, the law can't tell me who I can and can't sleep with. Because adultery is viewed as negative but there's no criminal [results]. You couldn't prosecute me for adultery. So that's, I guess that's kind of how I view polygamy except I view it in the light of this is a situation that I agreed to and I know who my husband is sleeping with, you know, and I've agreed to that. So if you're going to prosecute polygamy, well, prosecute adultery.

141. Given this parallel between secular social practices and plural marriage, participants at times seemed unsure about the rationale underlying the prohibition of polygamy. Many acknowledged that some people outside of polygamous communities have a belief or a concern that plural marriage might lend itself to the abuse of women and children. They further noted that this theme was central to some autobiographical accounts written by women who have left FLDS communities in Canada and the U.S.¹²

142. No participant in my research indicated that she had personally been subject to domestic violence or abuse. They acknowledged that these acts are undeniable wrongs.

143. Yet, rather than assuming these ills are inherent to polygamy, several participants indicated that they are specific problems that merit prosecution and punishment where appropriate evidence exists. The following quotes from three different participants are illustrative:

- A law against polygamy doesn't make [less] abuse. [Law] should be geared at the problem, and I don't think that polygamy necessarily is a problem.

¹² Palmer and Perrin (2004); Jessop (2007).

Polygamy is a lifestyle choice and it's a legitimate lifestyle choice for consenting adults, for people that chose it.

- I feel like polygamy should be decriminalized. [I]t's not polygamy that's the problem. If there's abuse, or if there's underage marriage, that's the problem. And that should be solved.
- If there's abuse, sure go after the abuser! And of course that happens. If there's a man abusing his wife and children then go after him!

144. Moreover, some woman acknowledged that there might indeed be situations of abuse in polygamous marriages but pointed out that abuse might also be found in monogamous relationships. When I was not in Bountiful conducting interviews I stayed in touch about my research with participants via email. In one email correspondence, a participant wrote the following, which is illustrative of the point just made regarding the potential ills that might be found both in plural and monogamous unions:

I've been thinking about the polygamy trial, and find it interesting that Mr. Opals [sic] complaint is that polygamy abuses women. I've been thinking and have to say polygamist women's lives are pretty basic. We deal with the same issues any marital [sic] relationship deals with. The possibility of marring [sic] a controlling partner, or dealing with jealous spouses, [sic] and a whole lot of other ups and downs. As you and I both know a relationship takes work and effort just like raising children.

Polygamy outside Bountiful

145. While most of my research on polygamy has focused on empirical work in Bountiful, I also conducted research in 2004-2005 as part of my commissioned work for Status of Women Canada on the circumstances of polygamy in different cultural and geographic

settings. This work studied the social, economic and health implications of polygamy for women.

Social implications of polygamy for women

146. The literature that exists on polygamy worldwide indicates that some of the social experiences communicated by women in Bountiful are encountered also by women in polygamous communities across different cultures. In particular, the literature speaks to: relationships among sister wives as potentially competitive or collaborative, the risk of insularity in a polygamous community, and gender inequality. The literature also offers some insight into the outcomes for children of polygamous life.

i) Relationships among sister wives

147. Competition and jealousy among sister wives is commonly observed within plural marriage communities.¹³

148. In some contexts, jealousy between sister wives risks escalating to intolerable levels, resulting in physical altercations.¹⁴ Accounts of immigrant women in France within polygamous marriages provide a stark example. Having moved to a jurisdiction where living expenses are much higher than in their home countries (often, in North or West Africa), polygamous families often cannot afford multiple residences for each of a husband's wives and her children.¹⁵ A polygamous family thus might cohabit in overcrowded conditions, which causes extreme stress. There have been reports of women treated in Paris hospitals for physical injuries resulting from confrontations among family members, often sister wives. Other women have attempted suicide as a result of this domestic tension.¹⁶

¹³ Al-Krenawi *et al.* (2001); Al-Krenawi and Graham (1999) at 502; Al-Krenawi (1998); Al-Krenawi *et al.* (1997); Chambers (1997) at 66; Madhavan (2002); Starr and Brilmayer (2003) at 245-46; Wing (2001) at 855; Thompson and Erez (1994) at 31; Jelen (1993) at 47-48.

¹⁴ White (2009) at 500.

¹⁵ Starr and Brilmayer (2003) at 247.

¹⁶ Bertrand (2002); Simons (1996).

149. Literature on polygamy outside of western contexts suggests that the negative consequences of sister wife rivalry might be particularly difficult for first or “senior” wives. These wives are often less favoured by their husbands, tend to have fewer economic resources, and receive less conjugal support and attention than junior wives. This differential treatment by husbands may result from the fact that marriages to a first wife are arranged through family exchanges, whereas more junior wives are chosen, based on love matches.¹⁷ A husband’s independent decision to take a wife on the basis of “romantic love” is likely to cause strife among wives.¹⁸
150. In some cultures, though, becoming a “senior” wife implies a promotion within a family hierarchy that entails respect and obedience from junior wives, particularly in the husband’s absence.¹⁹ Senior wives may exercise considerable authority and control over junior wives, and can be instrumental in helping husbands select an additional wife to assist with child care and domestic responsibilities.
151. According to one study,²⁰ the status of each wife in a polygamous family is largely dependent on the legal and social context. This study, which considered Muslim polygamous women living in England, indicated that first wives received the most favoured status. Since domestic polygamy is illegal in the United Kingdom, a subsequent wife is not considered a legal wife, and thus cannot be openly held out as a spouse in all social circles. Subsequent wives also sometimes lived in inferior housing and saw their husbands less frequently than first wives. While women resented these circumstances, they felt that they remained “true wives” even though their marriages were not recognized under civil law.
152. This situation could arise in any country that prohibits and rejects polygamy, like Canada. In these settings, a first wife might be in a preferred juridical (and thus, possibly also economic) position, since she alone will be recognized as a spouse by law. Subsequent spouses married under religious law would be deprived of spousal recognition, spousal

¹⁷ Al-Krenawi *et al.* (2001); Al-Krenawi *et al.* (2002).

¹⁸ Gage-Brandon (1992) at 291.

¹⁹ Ahmed (1986) at 63; Thompson and Erez (1994) at 30-31.

²⁰ Wing (2001).

benefits, and might have to conceal their conjugal relationships out of fear of criminal prosecution or immigration concerns, if they are residents without legal status.²¹

153. While evidence of rivalry among wives exists, the scholarship also suggests that women in plural marriages might experience relationships with sister wives as enriching and valuable. As I observed in Bountiful, this research indicates that women might perceive such relationships as providing critical economic support, companionship and child care assistance.²² Relationships with sister wives seem especially beneficial to women's economic and political power where these women have a pre-existent familiar relationship.²³
154. Researchers who have considered polygamous communities in the United States have also observed that women benefit from the female companionship and friendship that polygamy can afford, as well as the sharing of childrearing and household responsibilities.²⁴ While women might initially feel uncomfortable and envious when a new woman enters the household, these sentiments usually fade as the family and community collaborate to ensure harmonious relationships among the women and equal treatment of the wives. Women thus often encourage their husbands to marry additional wives.²⁵
155. Given this sororal bond that is observed in many polygamous families, one author notes how this family structure might even be desirable to a modern career woman. Specifically, it could allow her to work outside the home while her sister-wives look after her children.²⁶
156. In addition to companionship and domestic assistance, the female network created through polygamy has also been said to engender female solidarity in a household. For example, if a husband is abusive or violent, women may come together to counter this and assist one another. They can take similar action where their husband engages in any activities

²¹ "Europe: Russia Says No to Polygamy" *BBC News* (21 July 1999), online: BBC News Online <<http://news.bbc.co.uk/1/hi/world/europe/400351.stm>>.

²² Anderson (2000).

²³ Yanca and Low (2004).

²⁴ Chambers (1997) at 73-74; Forbes (2003) at 1542-43.

²⁵ Chambers (1997) at 73-74.

²⁶ White (2009).

of which they disapprove. By expressing their dissatisfaction collectively, women have a greater chance of halting or changing the impugned behaviour.²⁷

157. There is some research, though, that starkly contrasts this portrayal of sister wives' collaboration. One study of Suni Muslim women living in plural marriages in America notes that domestic abuse often occurs unchecked, despite sister wives' full awareness of a husband's conduct. This may occur either because women feel powerless in the face of conjugal violence or because women simply choose not to intervene.²⁸ As noted, sister wives might even be the perpetrators of domestic abuse.²⁹

158. The tenor of a woman's relationships with her sister wives seems to be dependent, at least in part, on the socio-cultural and economic contexts that frame her polygamous family. As one study suggests, women – like all individuals – will assume a pattern of behaviour that best allows them to subsist within, and benefit from, their family and cultural structures. Thus, if sister wives need each other's support and assistance, they are likely to collaborate. But if such interdependence does not exist and there is little incentive for sister wives to ally with one another, competition is more likely to characterize their relationships.³⁰

ii) Risks of insularity

159. In places where polygamy is criminalized, as in Canada, it is imaginable that families who take up this practice will do so clandestinely and inconspicuously. Specifically, a fear of stigmatization and criminal penalty may lead to social insularity among polygamous families uneasy about having their family structure publicly known or exposed. Non-status immigrants might feel especially vulnerable in this connection, as public knowledge about a polygamous lifestyle might trigger deportation proceedings.

²⁷ Forbes (2003) at 1542-43.

²⁸ Hassouneh-Phillips (2001) at 744-46

²⁹ See *supra*, note 16 and accompanying text.

³⁰ Madhavan (2002).

160. Even in Bountiful, where polygamy occurs openly, a risk of insularity remains. Although residents of this community move and out of this physical space to obtain services or to work in nearby towns their link to a known polygamous society might adversely affect their willingness to seek out certain resources and services.
161. To remain shielded from public awareness and scrutiny, a polygamous family would have to minimize its contact with the “outside” world and attempt to conceal their marital and family relationships. For example, as noted in some interviews with participants from Bountiful, women might feel reticent about obtaining mental health or family counseling services.
162. Women in insular communities may also be more vulnerable to abuse. Specifically, women without contacts beyond their community may have little or no knowledge about, or willingness to use resources that they can trust and rely on if they encounter family violence or abuse.
163. In a similar vein, some of the literature expresses the concern that residents – especially women – of closed communities might lose the perspective and ability needed to make informed, autonomous life choices.
164. With specific reference to polygamy, this literature suggests that women would never actively make an informed choice to accept this form of marriage. This view posits that because women in plural marriage societies, especially those connected with fundamentalist Mormonism, are subject to social isolation and religious indoctrination throughout their lives, they are victims of “religious coercion” that deprives them of the ability to choose to marry, to choose to enter sexual relationships once married, or to choose to leave their polygamous marriages.³¹

³¹ Ward (2004) at 145-47.

165. In this context, the age at which women marry into polygamous unions is often discussed. In different polygamous societies, it is reportedly common for teenage girls – some as young as fourteen – to marry men in their 40s or 50s who have been selected by community leaders. The idea that an adolescent girl would ever independently “choose” to marry in this context has been rigorously challenged.³²
166. Another body of scholarship offers a different view about women’s choices in regard to plural marriage. At least one author writing about polygamy in the United States indicates that young women who marry polygamously do so willingly, in accord with their religious views and values. There is thus no violation of their rights in this connection.³³
167. Moreover, women from Bountiful have spoken out publicly in support of their lifestyle, firmly maintaining that they have made enlightened and active choices in regard to marriage and family relationships and responsibilities.³⁴ They also insist on marriage choices being made only once a person reaches the age of adulthood.³⁵ This position is reflected in my own research and discussions with women in this community.
168. The issue of choice in relation to polygamous marriage should also be understood against the backdrop of the male hierarchies that commonly form in such communities, evidencing economic inequalities and injustices among men. The literature about plural marriage in the international context suggests that only affluent and high-ranking men take wives. As a result, women and their families may prefer marriage to a polygamist over marriage to an unmarried man of little means.³⁶ Where a woman opts for polygamy in these circumstances, the limitations on her choice are apparent.

iii) Gender inequality

³² Al-Krenawi and Graham (1999) at 501; Palmer and Perrin (2004); Ward (2004) at 149; Peters (1994) at 86-87.

³³ Forbes (2003) at 1544-45.

³⁴ D’Amour (2004a); D’Amour (2004b).

³⁵ “B.C. Polygamists Want Age of Consent Raised” (19 February 2005), online: CTV News Online: <http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/1108760102803_29/?hub=CTVNewsAt11>.

³⁶ Borgerhoff Mulder 1992; Anderson (2000) at 104.

169. In virtually all the polygamy studies I have come across, the societies examined have been “polygynous,” that is, characterized by a union of one husband and plural wives. Very few polygamous societies in the world are “polyandrous”, that is, involving two or more husbands sharing a single wife.
170. Polyandry is rare since it limits male reproductive success. As one study notes, “a man who marries polyandrously can expect to sire only a fraction of one woman’s children.”³⁷ Polyandry might nonetheless arise in circumstances that hinder men’s ability to support women and their children adequately.
171. Since most polygamous communities are comprised of families headed by one husband having multiple wives – rather than one wife with plural husbands – concerns about polygamy’s implications for gender equality are plain. Extensive literature thus addresses whether a union in which two or more women must “share” a husband who in turn enjoys plural sexual and domestic partners, is inherently discriminatory.
172. Some scholars have responded to this concern with the claim that women are actually the primary beneficiaries of polygamy. Given the structure of plural marriage families, men bear the singular responsibility of providing for their multiple wives and many children, whereas women might benefit from this *economic* support. Women might also find a constant source of *social* support in their sister wives.³⁸ As evidenced from the information presented earlier in the present Affidavit, these points emerge also in my own observations and interviews in Bountiful.
173. Furthermore, for some women, plural marriage might represent an important contribution to the legitimacy of their own cultural or religious understandings of family life. These marriages thus might symbolize a crucial association with traditional values and one’s faith

³⁷ Levine and Silk (1997) at 376.

³⁸ Forbes (2003) at 1543.

community, and this can provide certainty and security as to a women's role within her known social and cultural order.³⁹

174. Finally, it has been argued that although polygamy creates a family structure in which men and women might not wield equal power and authority, this alone is insufficient to consider the practice harmful to women, especially when the patriarchy embedded in more mainstream religions is considered.⁴⁰

175. On the other hand, a number of authorities stress that polygamy *is* inherently discriminatory and inhibits gender equality.⁴¹ One study notes that the acceptance of polygamy by law or by a society's norms may be enough to thwart women's equality, even if they are not actually in a polygamous marriage. This work notes the stress that a woman in a polygamous society would face living with constant uncertainty as to whether her husband might take a subsequent wife.⁴²

176. A central argument raised in some literature critical of polygamy focuses on reproductive autonomy. This scholarship indicates that because women's worth in polygamous societies is often linked to the number of children they have, and because women are forced to compete with sister wives, women lose the ability to control decisions over reproduction.⁴³ Moreover, polygynous cultures are characterized by patriarchal family structures, within which women may have a marginalized ability to question a husband's authority and express individual wishes, even in regard to private and deeply personal issues like childbearing.⁴⁴

177. The stories recounted by women in Bountiful to me as part of my research suggest that reproductive choice has previously been a challenge for a number of women. However, at least some women in this community now seem to be making more decisions independently about whether and when they will have children. This has occurred through their own

³⁹ Rude-Antoine (1991).

⁴⁰ Chambers (1997) at 82.

⁴¹ Adjetey (1995) at 1357; Strassberg (1997) at 1592ff; Eskridge (1996) at 149; Agadjanian and Ezech (2000); Ward (2004).

⁴² M'Salha (2001) at 177.

⁴³ Adjetey (1995) at 1358; Committee on Polygamous Issues (1993) at 8-9.

⁴⁴ Agadjanian and Ezech (2000); Kaganas and Murray (1991) at 128-29.

initiative and with the benefit of counsel from their nurses and midwives and other community members.

178. Some of the literature discussing polygamous spousal relationships reports that the patriarchal nature of polygamy leads not only to women's subordination, but also to their sexual, physical and emotional abuse at the hands of their husbands.⁴⁵
179. Spousal violence also characterizes many monogamous relationships, and thus, this challenge is not unique to polygamy. However, some literature suggests that a patriarchal social or family structure engenders an increased risk of spousal violence.
180. It would be a mistake, however, to believe that all polygamous marriages are abusive. Many women living in polygamy have supported plural marriage and claim to find happiness and satisfaction within their marriages and family structures.⁴⁶ Some evidence reveals genuine love and companionship among polygamous spouses and within their entire family unit.⁴⁷ As discussed, this sentiment emerged in many of the narratives I heard from women in Bountiful about their family and spousal relationships.
181. The literature on polygamy does not conclusively evaluate whether plural marriages are more likely than monogamous ones to lead to marital discord, dissatisfaction and subsequent dissolution. Some evidence suggests that a husband's decision to take a subsequent younger wife will frequently cause women to suffer low self-esteem and perhaps consider divorce.⁴⁸ One study of plural marriages in Morocco maintains that polygamy risks destabilizing the household and the lives of children, and causes women to experience high levels of insecurity and uncertainty.⁴⁹ Divorce might be the foreseeable result of this. Another report

⁴⁵ Chambers (1997) at 66, 73-74; Al-Krenawi and Graham (1999) at 501ff; Al-Krenawi and Lev-Wiesel (2002) at 158; Hassouneh-Phillips (2001) at 741ff; Thompson and Erez (1994); Committee on Polygamous Issues (1993) at 78ff.

⁴⁶ D'Amour (2004a); D'Amour (2004b); Carmichael (2004).

⁴⁷ Palmer and Perrin (2004); Solomon (2003).

⁴⁸ Al-Krenawi *et al.* (2001).

⁴⁹ M'Salha (2001) at 174

indicates that the practice of allowing polygamy under Islamic law is the principal cause of divorce in the Kingdom of Saudi Arabia.⁵⁰

182. For some plural wives, though, divorce simply is not an option. Although they may feel devastated when their husbands take subsequent wives, they might see themselves as having no choice but to accept this situation.⁵¹

183. At the same time, some scholarship sets forth arguments as to why women in polygamy in fact feel more secure about their marriages than women in monogamous unions. This research indicates that polygamous marriages are less likely than monogamous unions to rupture.⁵² Even the Moroccan study pointing to the destabilizing effect of polygamy indicates that within Islamic Moroccan communities, polygamy might in fact benefit a wife. Specifically, polygamy allows a husband to take a new, younger wife without repudiating – or divorcing unilaterally⁵³ – his first wife. This is viewed as significant given that the social consequences of repudiation can be worse for women than the circumstances of living in a polygamous marriage.⁵⁴

184. The intricacy of the relationship between polygamy and marital disruption and divorce is also evident in a Nigerian-based study which revealed that the probability of divorce within polygamous marriages varied considerably according to the number of wives in the union.⁵⁵ This research found that the most stable unions were those where one man married two wives. These marriages were less likely to lead to divorce than monogamous unions or plural marriages involving more than two wives. This study suggests that evaluating polygamous and monogamous marriages as simply dichotomous could lead to erroneous generalizations about each.

⁵⁰ See e.g., “Divorce Study in Saudi Arabia” *BBC News* (30 April 2001), online: BBC News Online: <http://news.bbc.co.uk/1/hi/world/middle_east/1304886.stm>.

⁵¹ Al-Krenawi *et al.* (1997) at 453; Al-Krenawi and Lev-Wiesel (2002) at 161-62; “Polygamy Law Set for Challenge” *BBC News* (18 April 2000), online: BBC News Online: <<http://news.bbc.co.uk/1/hi/uk/791263.stm>>.

⁵² *Forbes* (2003) at 1542-43.

⁵³ M’Salha (2001) at 178ff; Mir-Hosseini (2003) at 7.

⁵⁴ M’Salha (2001) at 175.

⁵⁵ Gage-Brandon (1992).

iv) Outcomes for children of polygamous life

185. Global research on women's experiences in polygamy also sheds some light upon the circumstances of children growing up in plural marriage families. This work allows for an analysis of how social dynamics within polygamous families might wield an impact on children and youth.
186. Research on children's experiences in polygamous families does not consider girls and boys separately. Rather, the data is aggregated, revealing how children and adolescents *generally* fare in areas like health and academics.
187. However, some reports have emerged to suggest that, at least in fundamentalist Mormon communities, boys and girls are treated differently. In particular, while young girls are urged to remain within their communities to become wives during their adolescence, community leaders drive out many teenage boys, so as to reduce their "competition" for young wives.
188. It is reported that as many as 400 boys as young as 13 years of age have been banished from their communities by fundamentalist leaders in Utah and Arizona, leaving many of them homeless, substance-addicted or working as prostitutes.⁵⁶ The potential for boys to be ousted from communities that require polygamy is noted in at least one study focusing on Fundamentalist Mormon practices.⁵⁷ This is likely linked to FLDS leader, Warren Jeffs', insistence on parents' expulsion of male children from the community to eliminate competition for wives among the older men in the community.⁵⁸
189. From the research that I have done, I cannot say whether the expulsion of boys is inherent to life in a community where polygamy is practiced or whether it is the direct result of the dogmatic dictates of one particular community figure. However, participants in my research indicated that monogamy is accepted in Bountiful to ensure an equal number of eligible spouses for all community members. Participants thus explained that only about one in 20

⁵⁶ Tresniowski (2005).

⁵⁷ White (2009).

⁵⁸ Billie (2008) at 128-9, 133-4.

community marriages are plural. They offered no suggestion that a current practice in the community is the ostracization or banishment of young men so as to work out a demographic reality conducive to polygamy.

- *Academic achievement and intellectual development*

190. Academic literature includes some discussion as to how polygamy might affect a child's intellectual and scholastic development. One group of scholars' work on adolescents within Israeli Bedouin-Arab communities was premised on the hypothesis that polygamous family structures *would* engender lower levels of intelligence and academic achievement among youth from polygamous families.⁵⁹ This hypothesis was based on polygamy's perceived association with higher risks of psychological maladjustment in children, and with families having lower socioeconomic status. Both of these factors affect academic achievement.

191. Various studies confirm that children from polygamous families are at an enhanced risk of psychological and physical abuse or neglect. While not entirely conclusive, research indicates that children can be adversely affected by rivalry between sister wives, and by the fact that more children in the family may mean less time with, and attention and supervision from parents, especially their fathers.⁶⁰ Moreover, a polygamous family structure might diminish the economic resources available to children and adolescents, which in turn might limit their access to books and activities that would foster learning skills.⁶¹

192. Yet, despite these social and economic factors underlying the hypothesis that polygamy would adversely affect academic achievements among youth, researchers actually found that an adolescent's family structure bore no significant impact upon her academic development.⁶² This outcome was attributed to various factors unique to the Bedouin-Arab cultural group under study. In particular, because polygamy was not viewed as a "taboo"

⁵⁹ Elbedour *et al.* (2003a); Elbedour *et al.* (2003b); Elbedour *et al.* (2000).

⁶⁰ Elbedour *et al.* (2003a); Elbedour *et al.* (2003b) at 229; Elbedour *et al.* (2000). Strassmann (1997) at 693; Jelen (1993) at 48-49; Simons (1996).

⁶¹ Elbedour *et al.* (2000).

⁶² Elbedour *et al.* (2003a); Elbedour *et al.* (2000).

practice in this community, adolescents were less likely to feel “different” or ashamed about their family structure. This in turn promoted their learning and literacy skills.⁶³

193. There was also extensive interaction between children and youth from polygamous and monogamous families within the community, giving them the sense of sharing the same community as their peers, regardless of family structure.⁶⁴

194. Furthermore, due to the level of intermingling within the whole community, fathers were less likely to be absent from their children for extended periods, even when they had several wives and many children.⁶⁵ Fathers within this community often live with all of their children and multiple wives within the same home.⁶⁶ These factors were all viewed as promoting the psychological health and self-esteem of youth from polygamous families.

195. It should be noted that this research on adolescents is inconsistent with another study led by the same researcher, which examines developmental impacts of polygamy on younger, elementary school-aged children within the same community.⁶⁷ This study found that younger children tend to experience higher levels of attention deficits and behavioural problems than children from monogamous families. The researchers posit that these younger children might be more affected by polygamous life than adolescents since they are likely to be more attached to their parents and their immediate home environments, and probably have not yet developed the necessary social networks and mental ability to cope with a stressful home environment.⁶⁸

196. While the results of this work in relation to older children and adolescents might suggest that children have the ability to outgrow any harmful impacts of polygamy, the particular cultural context of this research must be kept in mind. The widespread support and acceptance of polygamy with Bedouin-Arab culture, the pervasive intermingling of youth

⁶³ Elbedour *et al.* (2003a); Elbedour *et al.* (2000).

⁶⁴ Elbedour *et al.* (2003a).

⁶⁵ Elbedour *et al.* (2003a).

⁶⁶ Elbedour *et al.* (2000).

⁶⁷ Elbedour *et al.* (2003b).

⁶⁸ Elbedour *et al.* (2003b) at 231-32.

from monogamous and polygamous families, and the shared residence of fathers with all wives and children are not traits typical of all polygamous communities.

197. Where these factors are absent, we might expect polygamy to exert some deleterious effects upon children and adolescents. Research on African wives of polygamous men living in France seems to support this.⁶⁹ This work notes that because mainstream French society was both unwelcoming of immigrants and disapproving of polygamy, women and their children were ostracized and isolated. In schools, children feared mockery by classmates and delinquency rates among them were reported to be relatively high.⁷⁰
198. In a similar vein, one study maintains that children of American polygamists suffer as a result of their physical and social isolation. Education in these communities – like all other aspects of life – is controlled by religious authorities. The thoughts and beliefs that children encounter are controlled, allowing them only to learn polygamist beliefs, and “blinding children to the existence of life outside polygamy.”⁷¹
199. Moreover, researchers working on Israeli Bedouin-Arab polygamous communities found that children of senior wives suffered particularly, finding that they had lower school attendance, more difficulty adjusting to classroom norms, and were less likely to have functional peer and student-teacher relationships. In addition, these children often lacked proper school supplies. The academic achievements of children of senior wives in these particular communities was thus well below the school average.⁷²
200. In the context of young people’s intellectual development, my impression is that the social, economic and cultural forces of a community will be extremely important on determining the overall well-being and accomplishments of residents. Where polygamy is not socially stigmatized, where appropriate educational resources and facilities exist, and where

⁶⁹ Starr and Brilmayer (2003).

⁷⁰ Starr and Brilmayer (2003) at 246.

⁷¹ Ward (2004) at 149.

⁷² Al-Krenawi *et al.* (1997) at 451-52.

there is adequate familial and parental support for learning, the research indicates that young people can succeed academically.

201. My observations of young people in Bountiful suggest similar principles. While I did not formally interview any children or adolescents as part of my research, I did speak with many of them. I have been consistently impressed with the general level of insightfulness, openness, maturity and articulateness of the young people I have met in this group. Many are children and teenagers who are computer literate and read widely. I have had conversations with some children about books like *Harry Potter*, with which they are deeply familiar.
202. While children in Bountiful are educated at the two local community schools, these are public institutions that are funded and regulated by the provincial government. I understand that the curriculum has come under state scrutiny in the past, given the schools' location, however, findings were that the curriculum meets the required elements set by the Ministry of Education for B.C.
203. Apart from formal learning, children and youth in Bountiful whom I met were very "in touch" with popular culture and the ordinary things that concern most young people. They are active in sports and other extra-curricular activities; hockey (for both girls and boys) and ballet came up often. They are also connected through popular media to contemporary music and television programs.
204. As an example, during my 2009 visit to Bountiful one of my RAs created a slideshow of the various photographs that we had taken in the community over the preceding days. These photos were taken as part of my project, which has also aimed to include a visual component using photographic images. The slideshow was presented to a group of about 20 to 25 community members, which included youth and young adults, as well as older community members. My RA asked the group before beginning if they wanted her to set the slideshow to music, and the younger members of the group asked for songs by artists like Jordan Sparks and Rihanna. They also knew that Jordan Sparks had previously been won the American Idol competition in a previous season of this program.

205. My research also suggests that learning is taken into account in Bountiful even for preschool-aged children. For example, I was informed that playgroups are organized in the community, hosted by service workers from Creston who visited Bountiful with toys and books, to offer children a chance to convene and play together with new things. Women also spoke about going to events with their children like book-readings in nearby towns.

206. Given all of this, my sense is that in a context where encouragement and support for learning exists, young people can develop intellectually in both formal and informal intellectual settings, even in a community that accepts polygamy. In Bountiful, the young people I met seemed to learn both through school, through independent reading, through extracurricular activities, through their social networks and through media exposure that prompted some to internalize norms and interests in line with contemporary popular culture.

- *Factors Potentially Compromising Children's Health*

207. Some research suggests that because polygamous families usually have many children, there cannot be enough supervision and attention for all of them.⁷³ It has been argued that this causes children's health and development to suffer.⁷⁴

208. Moreover, there is some research to suggest that where marriages are arranged, they risk being incestuous. This may lead to in high-risk pregnancies, birth defects, and high maternal mortality rates.⁷⁵

209. In Bountiful, the risk of familial intermarriage is something evidently on the minds of community members. During my visits to this community, residents spoke frequently of the need to reach out to communities with similar faith beliefs.

⁷³ Committee on Polygamous Issues (1993) at 9.

⁷⁴ Ward (2004) at 149-50.

⁷⁵ White (2009) at 500-501.

210. In 2009, I attended a wedding between a groom from Bountiful and a bride from an FLDS splinter group in the United States. This was a monogamous wedding, celebrated by a Justice of the Peace for British Columbia. Many community members indicated that this event was important for Bountiful, as it initiated what was expected to be ongoing contact and connection with a comparable community. More specifically, the wedding was viewed as forging a link with a community characterized by beliefs and habits similar to those in Bountiful, and this was perceived as a way to provide young people in Bountiful with a pool of prospective future spouses. Community members valued this highly, knowing that options for marriage within their own group were slim, due to the risk of intermarriage.
211. Moreover, because most community members also hope that their young people will choose spouses from similar cultural and religious backgrounds, a new affiliation with an FLDS-associated group was viewed as holding great promise for realizing this goal.
212. Apart from this, the literature on polygamy notes some physical health risks to children. One study of polygamous families in Mali found a marked increase in infant mortality rates in polygamous families when compared to rates for children of monogamous parents.⁷⁶ According to its author, this study provides “the strongest evidence to-date for an adverse effect of polygyny on child mortality in a human population.”⁷⁷
213. This research suggests that higher rates of infant mortality in polygamous family structures could be attributable various factors, including a risk that children may fall victim to animosity among sister wives. This became so intense in the Malian community studied that there existed reports of sister wives abusing and even poisoning each other’s children.
214. An alternate theory postulated in this study for differential child mortality rates is that polygamous families might invest less in their children, at least in the Malian context. Since polygamous fathers produce a greater number of offspring overall, it is hypothesized that each child becomes less important to his lifetime reproductive success. Moreover,

⁷⁶ Strassmann (1997).

⁷⁷ Strassmann (1997) at 694-95.

polygamous families may be less inclined or able to pay for treatments for childhood illness.⁷⁸

215. The opposite position about children's health and welfare in polygamy has also been advanced. Some scholars argue that polygamy might actually benefit child survival rates. Specifically, they suggest that, the network of sister wives that exists within a plural marriage family should facilitate care arrangements for infants and children and ensure that there is always an adult in a household attentive to a child's needs and supervision.⁷⁹

Economic implications of polygamy for women

216. While researchers who have studied how polygamy affects women have tended to focus on the practice's social effects, the literature also illuminates some economic implications of polygamous life. In particular, it discusses the economic circumstances of women *living in plural marriages*, as well as the circumstances of women *who leave plural marriages*.

i) The Economic Circumstances of Women in Polygamy

217. Two different hypotheses about the economic effects for women in polygamy exist. On one hand, because polygamy requires a husband to provide for a plurality of wives and a potentially large number of children, it is presumable that resources within the family would be relatively scarce for each family member. Moreover, it may be posited that, if wives in a plural marriage are more likely to be restricted to working in the unpaid domestic sphere, they would have limited sources of independent income. Finally, even if these women were to seek gainful employment, their earning potential might be limited if they were married and had children at a very young age, and this limits their ability to pursue an education beyond that point.

⁷⁸ Strassmann (1997) at 693-94.

⁷⁹ Anderson (2000); Forbes (2003) at 1544-45.

218. On the other hand, some may expect women in polygamy to fare well economically. It may be assumed that a man who marries several wives would have to be financially able to support each of them. Thus, if married to a wealthy husband, a wife might lead a life of relative affluence, even if her husband's income was shared with other women. Additionally, a polygamous family structure might foster, rather than prevent, women from pursuing educational and employment opportunities. The fact that other wives might be available to support a woman by assisting with childcare and domestic responsibilities could allow her to take on potentially remunerative tasks. Finally, some expect women married polygamously to benefit from the fact that they live with, or close to, other female family members with whom they could collaborate in their labour, thereby allowing them all to be more productive.
219. The literature on this issue indicates that neither of these hypotheses is entirely accurate or incorrect. A substantial amount of research suggests that polygamy deprives women of economic resources, and of the ability to earn income independently of their husbands. For example, a study of polygamous marriages in Ghana indicates that wives in plural marriages were more economically marginalized than their monogamous counterparts. Polygamous wives were also less likely to be working for themselves, since they most often worked for a family member, usually their husbands. This study found that a significantly higher percentage of women (84 percent versus 63 percent) earned cash for their work in areas with a higher prevalence of monogamy, than in regions primarily characterized by polygamy. Women in higher polygamous regions were also less likely to receive formal schooling and higher education. The authors of this study maintain that the factors limiting women's potential to gain economic independence also diminished their ability to exercise social and reproductive autonomy.⁸⁰
220. Some work suggests that first or "senior" wives in a polygamous marriage are at a particular economic disadvantage.⁸¹ In some societies, senior wives work outside the home

⁸⁰ Agadjanian and Ezech: (2000).

⁸¹ Al-Krenawi *et al.* (2001); Al-Krenawi and Lev-Wiesel (2002).

far less often than junior wives. They also tend to have less formal education and a greater number of children.⁸²

221. Differences between the economic circumstances of senior and junior wives might be explained by the fact that, as explained earlier in this Affidavit (para. 149), in some cultures first marriages are often prearranged between families, whereas second and subsequent unions are more likely to be associated with love between the couple, and an active choice to marry. As a result, second and subsequent wives may bear favoured status with respect to economic resources, social support and attention from their husbands.⁸³

222. Earlier writings on FLDS communities and on Bountiful in particular indicate that women in this religious setting have generally had a limited ability to acquire economic resources. Most property within Bountiful is owned by a trust called the "United Effort Plan" ("UEP"). This trust was started by an American FLDS community and owns the land and houses in Bountiful where residents live. Legal ownership of the property is thus reported to be in the hands of community leaders.⁸⁴ My understanding is that as of 2005, the UEP Trust has been managed by Bruce Wisan, C.P.A., a trustee appointed by court order pursuant to a finding the UEP's assets had been previously mismanaged by FLDS leaders.

223. The UEP trust is reported to own considerable amounts of property in Bountiful and other FLDS-associated communities. Although group members built homes and structures on this property at their own expense, these buildings are in fact owned by the UEP. Residents have historically resided in these buildings at the discretion of the trust. If a member left the community or was ousted from the group, he or she stood to lose any property that he or she built or paid for without any financial compensation.⁸⁵

224. It has been reported that members of Bountiful were typically employed locally by group leaders. Wages were kept low and the hours were long. Members were required to give at

⁸² Al-Krenawi *et al.* (2001).

⁸³ Al-Krenawi *et al.* (2001); Al-Krenawi *et al.* (1997) at 451; Jelen (1993) at 47-48.

⁸⁴ Committee on Polygamous Issues (1993) at 7-8, 59; Peters (1994) at 57ff; 72-73.

⁸⁵ Committee on Polygamous Issues (1993) at 59.

least 10 percent of their wages back to the group, but more was frequently given such that workers kept only enough for their own basic sustenance. Women often did not work, and did not receive much financial assistance from their husbands. They thus were frequently required to support their children on government family allowances.⁸⁶

225. While the early writing on women in FLDS societies, and in Bountiful specifically, suggests bleak economic circumstances for women, a couple of points should be borne in mind. Most importantly, this writing is primarily not academic and was developed in the early 1990s, before the Split in Bountiful.

226. My own observations in this community lead me to believe that many women and families do live frugally and modestly. Women often make their own clothes and grow and preserve their own food. They also commonly share living spaces (e.g., kitchens and living spaces). It is not clear to me, though, whether this lifestyle is attributable to tradition and culture, to economic necessity, or to a combination of both.

227. Some women have mentioned the tithing practices that I refer to above (para. 224). However, it is not clear to me whether this a historical Church practice or whether continues in Bountiful today.

228. The economic status of a woman in Bountiful seems to depend on whether she works outside of the home and the kind of work she does. Women who had paid jobs seemed to have greater economic means and liberties, even though there seems to be a clear culture of sharing privately-earned wealth within a household. For example, women spoke of having cars and bank account savings in their own names. They also indicated an ability to make choices about how they would spend income they individually earned. Some women also clearly had more modern, spacious and private living arrangements than other women. Those who seemed more affluent usually had secure, wage-earning work.

⁸⁶ Committee on Polygamous Issues (1993) at 59.

229. Certain reports in various jurisdictions allege that women in polygamous unions are at risk of economic exploitation by their husbands. In jurisdictions where polygamous marriages are not recognized by the state, plural wives may file welfare claims as single mothers in need of child support. However, some reports suggest that husbands have usurped these funds, or funds women otherwise earned, to support themselves and their polygamous lifestyles.⁸⁷ In particular, men in France were reported to use their wives' income to fund return visits to their respective countries of origin to marry additional wives.⁸⁸

230. At the same time, there is research that suggests that polygamy might actually be advantageous for women, given that polygamous husbands in certain societies are obliged to be financially able to sustain multiple families before taking plural wives.

231. Further, the pool of labour created within larger domestic units, like those created by polygamy, reduces the need for wage labourers, thus keeping more of a husband's wealth within the family to maintain a higher standard of living. Sister wives might also cooperate in trade and economic transactions, thereby reducing costs and potentially providing income for the benefit of the family unit as a whole.⁸⁹ Polygamy thus might operate as a "communitarian and inclusive" way of life that ensures the integration of women in the social and economic family dimensions.⁹⁰ In the result, polygamous households might ultimately have more economic resources, and greater means of production for sustenance, than their monogamous counterparts.⁹¹

ii) The Economic Circumstances of Women Who Leave Polygamy

232. Prior to undertaking research in Bountiful, my appreciation of economic circumstances for women was shaped by the writing that existed at that time. This writing indicated that women in Bountiful would have an extremely difficult time leaving an unhappy marriage because this community is so insular and because its residents are taught to distrust all

⁸⁷ Ward (2004) at 148-49.

⁸⁸ Bertrand (2002); Jelen (1993) at 46; Simons (1996).

⁸⁹ Al-Krenawi (1998) at 69; Anderson (2000).

⁹⁰ Sigman (2006) at 143.

⁹¹ Lardoux and van de Walle (2003) at 821.

“outsiders”. Moreover, the literature suggested that women had no economic means to leave their marriages or the community if they so wished. They could not rely on spousal or child support seeing as many women, being unrecognized wives, would not be entitled to spousal support. In addition, most would be married to men with limited and stretched financial resources who would be incapable of affording child support payments.

233. After visiting this community and spending time discussing polygamy and marriage with a number of women who live there, my sense is that various circumstances might complicate a woman’s ability to leave her marriage or the community. These circumstances might be financial, but they might also be social and cultural. However, as noted above (paras. 79ff), women in Bountiful have left marriages that they found unsatisfactory.
234. Globally, it would appear that women in polygamy might be forced to leave a marriage by external forces rather than by choice. For example, where women move from jurisdictions that recognize polygamy to places that prohibit this practice, they might have no choice but to live as though unmarried to their spouses. This is evidenced in France where legislation known as the “Pasqua law” was enacted in 1993 to eradicate polygamy among immigrants.⁹² Pursuant to this law, a polygamous man seeking residence in France was permitted to live with just one of his wives. He was required to divorce his other wives, who were also required to leave his household. This policy applied prospectively and retroactively to polygamous families that had already immigrated to France. If a husband failed to comply with the law, he and all of his wives faced possible deportation and the loss of their working and residence papers and welfare benefits.⁹³ If, however, a polygamous man had children with French citizenship, he would not be deported but could be deprived of necessary papers to work in the country. As a result, he and his family could end up living in abject poverty.⁹⁴
235. The French Pasqua law came at tremendous expense to plural wives. The forced “de-cohabitation” of polygamous husbands and all but one of his wives left many women with no choice but to leave the household with few financial resources. In Paris, their searches for a

⁹² Bertrand (2002).

⁹³ Starr and Brilmayer (2003) at 247.

⁹⁴ Bertrand (2002); Starr and Brilmayer (2003) at 247ff.

new place to live were often fruitless, and some ended up living as squatters in abandoned city buildings.⁹⁵ Some women were also returned to their countries of origin.⁹⁶

Health implications of polygamy for women

236. Apart from polygamy's social and economic implications, the literature also speaks to this practice's potential effects on women's health and well-being. Most of the discussion that arises in relation to this topic has dealt with the psychological and reproductive health of plural wives.

i) Psychological Health

237. Some work suggests that polygamous wives more commonly face family stress and mental health issues than monogamous women.⁹⁷ As noted, the risk of psychiatric illness may be particularly acute for first or "senior" wives to a plural marriage. In a study of polygamous wives living in Gaza City, researchers noted that senior wives expressed great psychological distress and a sense of mourning or loss when their husbands took second or subsequent wives. More specifically, they experienced feelings of failure and low self-esteem, feelings that were often reinforced by family and community perceptions. Senior wives also experienced other mental health difficulties, such as anxiety and depression, more frequently than junior wives.⁹⁸ This research confirms results from an earlier study that examined the experiences of polygamous family members in Bedouin Arab society.⁹⁹

238. This sense of loss experienced by a woman when her husband takes a subsequent wife has also been reported by studies of polygamy in other socio-cultural settings.¹⁰⁰ A husband's marriage to a subsequent wife is often perceived as traumatic and unsettling by preceding

⁹⁵ Bertrand (2002); Starr and Brilmayer (2003) at 247-48.

⁹⁶ Starr and Brilmayer (2003) at 248.

⁹⁷ Al-Krenawi (1998) at 69; Al-Krenawi (2001).

⁹⁸ Al-Krenawi *et al.* (2001).

⁹⁹ Al-Krenawi *et al.* (1997).

¹⁰⁰ Al-Krenawi and Graham (1999); Hassouneh-Phillips (2001) at 740.

wives and their children.¹⁰¹ This development results in a major change in the family structure and a likely decline in the financial resources and attention that a man can provide his wives and children.¹⁰²

239. One recent study sets out the findings of a study conducted with 352 Bedouin Arab women, two-thirds of whom were in polygamous marriages and one-third of whom were married monogamously. This study concluded that women in polygamous unions exhibited considerably higher rates of psychological stress and dysfunction. In view of these findings, the authors called upon further research to consider “optimal strategies of transferring this knowledge [i.e., knowledge about difficulties associated with polygamy in some scholarship] to the community.”¹⁰³

240. The authors of this study observed that the psychological challenges they found polygamous wives to experience could be linked to the particular perception of women within the Bedouin-Arab population they studied. Within their communities “a woman’s maternal and wifely roles are the key to her female identity.”¹⁰⁴ Women might see polygamy as a “compromise” of such roles, and this in turn can adversely affect their social status and their overall psychological well-being.¹⁰⁵ This study thus alludes to the way in which particular perceptions within a community – especially those related to gender – may influence the experiences of women in polygamy.

241. Some women might also perceive polygamy as bearing the potential to strip them of their autonomy. If a woman feels compelled both to enter a marriage and to engage in sexual relations once married, this clearly will impact her sense of dignity and self-worth. It might also detract from her self-awareness and personal identity.¹⁰⁶

¹⁰¹ M’Salha (2001) at 174.

¹⁰² Hassouneh-Phillips (2001) at 740.

¹⁰³ Al-Krenawi and Graham (2006) at 15.

¹⁰⁴ Al-Krenawi and Graham (2006) at 14.

¹⁰⁵ *Ibid.*

¹⁰⁶ Committee on Polygamous Issues (1993) at 49-50.

242. However, some research indicates that some women seem to enjoy a high standard of psychological and emotional health because of the lifestyle polygamy affords.¹⁰⁷ As noted, women may benefit from collaboration and friendship with sister wives.¹⁰⁸ Polygamy might also be a psychological boon since it diminishes the possibility of divorce by offering dissatisfied husbands the opportunity to remarry without having to divorce his first wife. Arguably, this serves the interests of women in cultures where divorce might cause greater social humiliation and isolation for women than would life in a polygamous marriage.¹⁰⁹

243. Comparing this literature to my own observations in Bountiful, I note that many women whom I met and spoke with did indicate to me that they encountered emotional hardship when a new wife entered their family. This might be true even if a woman was consulted about the idea of taking a new wife and consented to this. Women explained that even if they believed that bringing a new wife into their home would be a positive thing overall, it was not always possible to set aside feelings of insecurity and jealousy. Women had various ways of managing these emotional challenges, such as discussing their trials with their spouses or with sister wives, with community elders, or in some cases that proved especially difficult, by asking for separate living arrangements away from other sister wives.

ii) Reproductive and Sexual Health

244. Polygamous life may also affect women's reproductive and sexual health. A study on polygamy in Senegal focusing on women's fertility rates in different marital arrangements indicates that women in plural marriages generally have lower fertility rates than women within monogamy. It found that each time a polygamous husband took a new wife, his prior wives all experienced decreased fertility. In addition, the highest ranking wife (usually the newest wife) was most likely to have a child first, given that she was probably most favoured by her husband.¹¹⁰

¹⁰⁷ Forbes (2003); Chambers (1997).

¹⁰⁸ Chambers (1997) at 66-67, 73-74; Forbes (2003) at 1542-43; Madhavan (2002).

¹⁰⁹ M'Salha (2001) at 175, 177.

¹¹⁰ Lardoux and van de Walle (2003).

245. Comparable results were obtained in a study on the relationship between polygamy and fertility in Ghana,¹¹¹ as well as in an anthropological study in Mali.¹¹²
246. Some research, however, suggests that polygamy, and the number of wives a husband has, do not necessarily affect women's fertility. Other variables, such as a woman's age, education, religion, and rank as a wife, arguably bear a more significant impact on her fertility level.¹¹³
247. Two studies in two different societies (one in Ghana and one in South Africa) also concluded that polygamy came at no real cost to women's fertility rates.¹¹⁴
248. Other work on polygamy in Africa also found that the data in relation to fertility and polygamy told "an equally variable and inconsistent story". It suggests that the sole conclusion that can be decisively drawn at this time is that polygyny does not come at the same cost to women as monogamy vis-à-vis reproduction. Nevertheless, the study warns against an unqualified comparison of research data on this topic, given that this data emanates from studies of "variable methodological quality".¹¹⁵
249. A better understanding of the relationship that might exist between polygynous marriages and fertility thus seems to depend on a more thorough evaluation and critique of the research methods that have been employed to consider this topic to-date.
250. Women in polygamous relationships may also be at an increased risk of exposure to HIV infection and other sexually-transmitted infections. This is indicated by research conducted in Nigeria¹¹⁶ and Angola.¹¹⁷ A study undertaken within a polygamous community in rural Gambia also indicated that women in polygamous marriages are three times more likely to be

¹¹¹ Bhatia (1985).

¹¹² Strassmann (1997) at 688.

¹¹³ Ahmed (1986).

¹¹⁴ Sichona (1993) at 480; Anderson (2000) at 104.

¹¹⁵ Borgerhoff Mulder (1992) at 48.

¹¹⁶ Adejuyigbe *et al.* (2004) at 279-81; Ajuwon *et al.* (1993-94) at 410ff; Committee on the Elimination of Discrimination against Women, (CEDAW), Combined Fourth and Fifth Periodic Reports for Nigeria at 8.

¹¹⁷ Angola, Combined Fourth and Fifth Periodic Reports of States Parties to CEDAW (8 June 2004) at 48.

affected by the Herpes simplex virus 2 (HSV2). HSV2 is associated with increased HIV infectiousness, and with a heightened susceptibility to HIV infection.¹¹⁸

251. Several media reports also indicate that polygamy has contributed to the spread of HIV and AIDS among women, especially in African countries. These reports have considered the link between sexually transmitted infection and polygamy in Nigeria,¹¹⁹ Swaziland,¹²⁰ Zambia,¹²¹ South Africa¹²² and sub-Saharan Africa generally.¹²³ These reports listed polygamy as a factor to be targeted and eliminated so as to assist in reducing the spread of sexually transmitted infections in these countries.
252. While these reports provide some indication of a possible link between sexual health and polygamy, a very recent peer-reviewed study indicates that a conclusive causal connection cannot be drawn. The authors of this study state plainly, “Literature on the relationship between polygamy and HIV transmission is limited and the findings contested.”¹²⁴ This study, based on qualitative research, found that it is not polygamy or monogamy that shapes “vulnerability or resistance” to HIV and AIDS, but rather, the interaction between the type of marital union and relationships within and beyond the marriage, as well as religious beliefs, teachings and practices, and the society’s view and construction of gender roles and relationships.¹²⁵
253. From my research on polygamy in different global contexts, I have found it nearly impossible to draw definite conclusions about whether polygamy adversely affects women either in terms of social, economic or health outcomes. In particular, although there is considerable literature to suggest that polygamy can be harmful to women, I have found it important to remain cognizant of two factors. First, as noted here, the literature on polygamy’s social, economic and health implications for women is not unequivocal; there is

¹¹⁸ Halton *et al.* (2003) at 98.

¹¹⁹ White (2004).

¹²⁰ Dixon (2005).

¹²¹ Laurance (2004); Human Rights Watch World Report 2003: Zambia.

¹²² Laurance (2004).

¹²³ Eilperin (2003).

¹²⁴ Saddiq *et al.* (2010) at 146.

¹²⁵ *Ibid.* at 149.

scholarship to suggest that with respect to each dimension, polygamy might actually benefit and be valuable to some women. Second, communities in which polygamy has been most nefarious for women are those that are geographically isolated and impoverished, where opportunities for education, work and accessing health and other social resources are limited. In these contexts, women as a whole may face difficult outcomes, regardless of whether they are married or not, and regardless of whether they marry polygamously or monogamously.

Professor Cook's Expert Report

254. I have been asked by Amicus counsel to offer comments on the Expert Report prepared by Professor Rebecca J. Cook for the Attorney General of Canada, which has been submitted as evidence in this Reference. These comments are set out below, in this final part of the present Affidavit.

255. I have never met Professor Cook and I do not know her personally. I am, however, familiar with her scholarship. I know that she is a leading Canadian legal scholar, particularly in the domains of reproductive health, gender equality and international human rights law. As her credentials indicate, she is a prolific and highly-respected academic, both in Canada and internationally. Her publications have made an important contribution to advancing knowledge in her domains of research.

256. I have read Professor Cook's Report, and I believe it is well-researched and instructive. As I will explain in the discussion that follows, my own work is not fundamentally incongruent with Professor Cook's research. However, I wish to comment on four issues on which my research has led me to conclusions that differ from certain points articulated in Professor Cook's Report. These four issues are: (1) the implications of polygamy's apparent gender inequality; (2) the outcomes for women and children of polygynous life; (3) the definition of polygamy; and (4) the relationship between family law and criminal prohibition.

Gender Discrimination as Inherent to Polygamy

257. In her Report, Professor Cook focuses on polygyny, that is, the form of polygamy involving one man having plural wives. Her study of existent literature on polygyny leads her to conclude that this is a practice that has “detrimental effects on women, and on society more generally.” (Para. 20) She attributes harmful outcomes for women on the “asymmetry” within polygynous relationships, which extends different rights, opportunities and obligations to spouses on the basis of gender and gender stereotypes. Professor Cook cites norms articulated by international human rights bodies in concluding that such asymmetry based on sex compromises “women’s dignity and equality in marriage and family life.” (Para. 26)
258. In my opinion, like many practices that we might characterize as “patriarchal”, polygamy ostensibly undermines the equality rights of women. Because the most common form of polygamy is polygyny, and because polygyny involves a man with the right to take plural wives, but not the reverse, this type relationship lacks formal equality. As such, it is not a practice that sits comfortably with many individuals in a western liberal democracy like Canada.
259. However, while for many Canadians, a woman whose husband takes subsequent wives may appear to have her dignity and equality undermined, my conversations with women in Bountiful suggest that this not how they perceive their own way of marriage and family life. Many women who are polygamous can articulate clear reasons as to why this form of marriage is logical and beneficial for them. Many have explained the ways in which they see themselves as leaders within their families and community. In my discussions with them, such women have not come across as weak, passive or misguided.
260. In addition, affronts to their dignity and equality have not arisen primarily through a husband’s marriage to other women (or, for monogamous wives, through the possibility of her husband marrying other wives). Instead, women with whom I have spoken in Bountiful feel marginalization, vulnerability and indignity from the state’s efforts to foreclose the life

and family choices that they wish to make, which they see as propelled by their faith, by personal choice, and by family and community norms.

261. Further, even assuming that the optical asymmetry within polygyny yields fewer substantive rights for women, it remains important to consider this against the range of practices tolerated by Canadian criminal law that have their roots in religion and culture and that might be seen as diluting women's dignity. In my research I have contemplated the ways in which polygamy is comparable to, and distinct from, practices such as the wearing of the *hijab* or the *niqab* in Islam, which might also be seen as based on sex stereotypes. The same can be said of other practices that, like polygyny, may yield different marital entitlements for women, such as the *talaq* within Islam, the *get* under Jewish law, or arranged marriages formed by families within various cultural communities.

262. Each of these practices raises important moral and social questions and controversies. They also raise concerns about gender equality and the dignity of women. All of this merits careful attention. Yet, as I understand it, the issue in this Reference is whether prohibiting a practice through the use of the criminal law is the most effective way of addressing the potential gender imbalances and stereotypes that may seem to be reflected in a practice like polygamy. My research would lead me to respond to this question in the negative. Women whom I have spoken with, who accept polygamy as consistent with their own beliefs and values, see their dignity as offended, not salvaged, by a provision that prohibits their lifestyle and subjects them and their family members to a risk of criminal prosecution.

The Implications of Polygamy for Women and Children

263. Professor Cook's Report offers an instructive overview of the literature on the ways in which polygamy may affect women's well-being. This part of her Report is concentrated on work that describes the *harms* plural wives might encounter. However, a look at the broader *implications* of polygamy for women yields a more nuanced picture of how women fare in polygamous families. As described earlier in the present Affidavit (paras. 146-253), the data

is quite mixed, such that existent scholarship does not reveal a direct, consistent or unequivocal equation between polygynous marriage and harm to women.

264. As discussed in Professor Cook's Report, and as set out in paras. 146-253 of this Affidavit, the literature indicates of some important concerns about women in polygyny. The same is true for the children of polygynous unions, but this scholarship in regard to children is less copious and developed.

265. These concerns are worthy of scrutiny, as any effort to identify and prevent systemic harms to women and children clearly deserves support and encouragement. However, in taking up this task, my sense is that two key points must not be forgotten. The first is that available academic and popular literature on polygyny does not paint a consistent or homogeneous picture of life for plural wives and their children. While they might face important challenges and adverse events, some women might thrive in polygyny. It is therefore essential to consider all available literature, and to wrestle with the diversity of experiences this presents, in trying to assess the experiences of polygynous wives and families in different social, cultural and economic settings.

266. A second key point is that even if one were to accept that polygyny invariably harms women's and children's social, economic, psychological and physical health, it is not clear that such outcomes are improved by a criminal ban on this practice. For example, should a woman fear stigmatization and criminal charges, she might be reticent to seek out the services she needs to address the psychological disadvantages that some literature associates with polygyny. This point about a plural wife's potential apprehension about seeking required health and social services emerged also in interviews I carried out in Bountiful. (See paras. 126-134)

The Definition of Polygamy

267. The conclusions that Professor Cook draws her Report appear to apply only to polygynous unions formed validly under the applicable legal regime (“*de jure* polygynous unions”) and to polygynous unions formed in jurisdictions where such relationships are legally banned or unrecognized (“*de facto* polygynous unions”).

268. Professor Cook sees these two types of polygynous unions as distinct from adulterous or polyamorous relationships. As she explains in her Report at paras. 14 and 15, Professor Cook sees *de jure* and *de facto* polygynous unions as distinct because the parties involved and “their broader religious or customary communities” understand these unions as marriages. In contrast, polyamory and adultery are not viewed as marital forms that extend particular rights and obligations to the parties concerned.

269. Thus, Professor Cook does not see her definition and discussion of polygyny as encompassing the practices of polyamory and adultery. She states at para. 15 of her Report:

Polyamorous arrangements, for instance, can ‘vary as to the number of people involved, the sexes of those involved, the sexualities of those involved, the level of commitment of those involved, and the kinds of relationships pursued.’ *Such relationships are not structured by normative systems that distribute rights unequally according to sex.* Likewise, adultery, which has never been a criminal offence in Canada, is not premised on a marital form that *ascribes different rights and responsibilities according to sex.* (Emphasis added, footnotes omitted.)

270. By drawing a distinction between polygyny on one hand, and polyamory and adultery on the other, Professor Cook seems to suggest that the former is premised on sexual stereotypes and rooted in “normative systems” that give women and men unequal rights. Her Report suggests that such problematic normative systems are rooted primarily in *religion and culture*. For example, paragraph 38 of her Report states: “Sexual and sex role stereotypes, embedded in religious and cultural norms of polygynous communities, are a continuing

wrong that is injurious to women and their families, with undesirable effects on community life.” Later, at paragraph 41 Professor Cook’s Report comments: “In the Canadian context, it appears that polygyny is largely motivated by religious or customary norms, rather than material necessity.”

271. In contrast with religiously and culturally-motivated polygyny, polyamory and adultery emerge as more benign, gender-neutral and secular practices.

272. The Report thus identifies three categories of relationships: (1) polygynous relationships, which are assumed to be driven by sexist and patriarchal stereotypes and which are the subject of Professor Cook’s Report; (2) polyamory, which involves multiple *conjugal* unions, but is not shaped by specific gender (and other) traits, thus suggesting that this practice is not affected by inherent gender bias; and (3) adultery, which ostensibly involves multiple *sexual* unions, again not shaped by specific gender (and other) traits, thus suggesting this practice also is not affected by inherent gender bias.

273. If I have interpreted Professor Cook’s report correctly, a difficulty emerges by virtue of the fact that this classification does not harmonize with the way in which Canadian law imagines and defines polygamy. Canadian law has not drawn these distinctions that suggested by Professor Cook’s Report, nor has it ascribed clear definitions to the three types of relationships listed just above. Rather, s. 293(1) arguably lumps the polygynist, the polyamorist and the adulterer (who comes close to having a “conjugal union” with a sexual partner) together. In theory, all three may be equally vulnerable to scrutiny and prosecution under this statutory provision.

274. I believe that Professor Cook’s classification in her Report is meant to clarify for the reader that her conclusions draw on research specifically about *polygyny*, as distinct from polyamory or adultery. Yet the plain wording of the *Criminal Code*’s polygamy prohibition indicates that it targets more than this form of union. That is, Parliament does not, in s. 293(1), direct law enforcement authorities to investigate whether a polygamy suspect is a polygynist (as opposed to a polyamorist or an adulterer) whose relationships are “*structured by normative systems that distribute rights unequally according to sex.*” Even though this

may not be an appropriate basis for prohibiting polygamy, the important point to note is the reach of s .293(1), which goes well beyond this distinct category of relationships that Professor Cook's Report qualifies as harmful to women and inconsistent with international gender equality norms and obligations.

Relationships between Family Law and Prohibition

275. Professor Cook makes reference in her Report to family law and the prohibition of polygamy. For example, she notes that most states now prohibit polygamy "by criminal or family law provisions". (Para. 17 of her Report) Later, she indicates that pursuant to several treaty bodies' indications, states parties must provide legal protection to women in polygyny, including family law relief on dissolution of the union. (Para. 24 of her Report)
276. A key difficulty that emerges in public and political discussions about polygamy relates to the confusion over the different ways that law can reject controversial practices. Prohibition through the criminal law, especially when accompanied by a sanction of imprisonment, is the strongest way that intolerance for a practice is communicated. However, it is also possible for law to reject a practice by refusing to recognize and regulate it.
277. Family law statutes in Canadian provincial and territorial jurisdictions cannot prohibit polygamy. Rather, they operate to set out the rights and obligations of individuals within families. Thus, provincial and territorial family law legislation can determine, for example, whether a polygamous spouse can obtain spousal support or property sharing at the end of her union. But these statutes generally cannot dictate whether polygamy is an acceptable practice and if not, whether it is punishable by law.
278. I agree with Professor Cook's suggestion that an entitlement to claim support and property division from her husband would help a woman leave an unhappy polygynous marriage. I also agree that the state should aim to facilitate this end. However, so long as polygamy remains a criminal practice in Canada, it is difficult to conceive of provincial and territorial legislatures mobilizing to amend family law legislation in their respective jurisdictions so as to facilitate alimentary support or property claims by plural spouses.

279. Thus, Professor Cook notes that the Human Rights Committee directs Canada to ensure “women’s awareness of their rights”. (Para. 172) Yet, meeting this obligation will have little meaning for plural spouses who, because of polygamy’s criminalization, likely have no entitlements under family law, and would risk prosecution for this practice in seeking out any such entitlements.

280. Finally, as Professor Cook notes, (para. 212) the Committee on the Elimination of Discrimination against Women has indicated that a state’s formal deferral to parallel normative systems that permit polygamy violates the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) and national constitutional equality protections. Yet, decriminalization should not result in such outright deference to religious or cultural normative orders that accept polygamy. That is, even if polygamy as it is currently defined in Canada’s *Criminal Code* is no longer a criminal act this should not entail a passive acceptance of all the norms, values and ideologies central to any community, including Bountiful, where polygamy occurs.

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SWORN BEFORE ME at Montreal,)
Quebec, this 1st day of October, 2010.)


A Commissioner for taking Affidavits)
for Quebec.)


ANGELA CAMPBELL



**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 #2 OF ANGELA CAMPBELL

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COMMISSION

NUMÉRO 170510

Vu les articles 214 à 223 de la Loi sur les tribunaux judiciaires (L.R.Q., c.T-16), le ministre de la Justice nomme, pour une période s'échelonnant du **20 juin 2009** au **19 juin 2012**, pour faire prêter serment dans tous les cas où les lois du Québec le prévoient et, en particulier, le recevoir lorsqu'un juge de paix peut le faire,

THOMAS CHALMERS

COMMISSAIRE À L'ASSERMENTATION

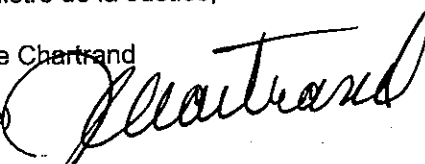
POUR LE DISTRICT JUDICIAIRE DE MONTRÉAL

Montréal, le 21 mai 2009

Le ministre de la Justice,

p.p. Joanne Chartrand

(Signé)





Being a Commissioner for Oaths

- Role
- Powers and restrictions
- Responsibilities
- Administering oaths
- Releases

Obtaining or renewing a commission

Role

Some legislation requires a person to be sworn before signing a document or testifying. This formality makes the document or testimony more official or credible, all the more so as a person who knowingly states false or misleading information under oath is liable to charges of perjury under the Criminal Code [3](#).

In Québec, Commissioners for Oaths are appointed by the Minister of Justice for a renewable period of three years.

Responsibilities



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Responsibilities

Commissioners for Oaths are not required to verify the truthfulness of the content of the affidavit being sworn. Declarants are responsible for the statement to which they are swearing. However, Commissioners may refuse to act if they note the following:

- the document is not prepared in the prescribed form, it is clearly worded incorrectly or contains vulgar or unreasonable assertions;
- the affiant does not seem to be in full control of his or her faculties or does not seem to be able to express his or her will.

Powers and restrictions



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Powers and restrictions

A Commissioner for Oaths may administer oaths only in the judicial district(s) indicated on his or her commission and in any case where an oath is required or permitted by the laws of Québec.

Commissioners for Oaths cannot receive the oath of their father and mother, their brothers and sisters, their spouse and children, or that of any party whom they represent in any suit or non contentious proceeding, with the exception, as to notaries, of the cases where they are authorized by law to do so.

No Commissioner shall require a fee of more than \$5 for receiving an oath.

Lastly, a Commissioner for Oaths can not attest that a photocopy of a document is a true copy of the original, except if he or she is the depository of the original document.