No. S097767
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**IN THE MATTER OF:**

THE *CONSTITUTIONAL QUESTION ACT*, R.S.B.C. 1996, C. 68

**AND IN THE MATTER OF:**

THE *CANADIAN CHARTER OF RIGHTS AND FREEDOMS*

**AND IN THE MATTER OF:**

A REFERENCE BY THE LIEUTENANT GOVERNOR IN COUNCIL SET OUT IN ORDER IN COUNCIL NO. 533 DATED OCTOBER 22, 2009 CONCERNING THE CONSTITUTIONALITY OF S. 93 OF THE *CRIMINAL CODE OF CANADA*, R.S.C. 1985, C. c-46

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# WRITTEN SUBMISSIONS OF THE INTERESTED PERSON, STOP POLYGAMY IN CANADA

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## I. INTRODUCTION

1. Stop Polygamy in Canada ("SPC") sought standing as an "interested person" on this reference proceeding in order to advance the argument that s. 293 of the *Criminal Code* is valid and enforceable in light of the *Charter*. SPC also made an important contribution to the wide body of evidence that was placed before the Court to ground its consideration of this issue.[1] As an interested person, SPC will not burden the Court with repetition of all of the arguments in favour of the validity of s. 293 of the *Criminal Code*. SPC adopts the submissions of the Attorney General for British Columbia (the "AGBC"), subject to the particular points elaborated upon below.

2. The opening statements of, and evidence adduced by, the Amicus and his allied parties indicate that there are primarily three bases on which s. 293 is being attacked:

(a) because s. 293 was enacted for an allegedly impermissible "religious purpose", it is argued that s. 293 infringes s. 2(a) of the *Charter* and cannot be saved by s. 1;

(b) because there are people with the strongly held religious belief that living a polygamous lifestyle is required for spiritual exaltation, it is argued that s. 293 infringes s. 2(a) of the *Charter* and cannot be saved by s. 1; and

(c) the harm allegedly caused by the prohibition of polygamy outweighs any harm caused by polygamy itself, and this is a consideration at both the breach and s. 1 stages of analysis under the *Charter*.

3. SPC submits that, on examination, none of these positions withstands scrutiny. Section 293 of the *Criminal Code* is not contrary to any enumerated rights under the *Charter*. If

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[1] Affidavits submitted by SPC include: Laura Chapman, Prof. Nicholas Bala; Prof. Stephen Kent; Prof. Marci Hamilton; Dr. Susan Stickevers; and John Llewellyn.

it were, any such infringement would be reasonable, and has been demonstrably justified by the evidence in this case, under *Charter* s. 1.

## II. "RELIGIOUS PURPOSE" ARGUMENT IS UNAVAILING

4. The Amicus has suggested that s. 293 of the *Criminal Code* was originally enacted to compel observance of a particular religious view, and that this "religious purpose" necessarily impairs its constitutionality. This argument mischaracterizes both the purpose of s. 293 as a matter of historical fact, and the legal principle upon which the argument is said to rest.

### A. Section 293 Was Not Enacted for a Religious Purpose

5. With respect to the "religious purpose" argument, SPC adopts the submissions of the AGBC that s. 293 of the *Criminal Code* was enacted to prevent the harms caused by, and reasonably apprehended to arise from, polygamy. The prohibition was aimed at all forms of polygamy, secular and otherwise. It was not focussed on undermining or restricting the religious beliefs of adherents to the Mormon faith, or any other faith.

6. The legislative history of s. 293 of the *Criminal Code*, as outlined by the AGBC, may be usefully contrasted with the history of the *Lord's Day Act* which was at issue in the case that is the high water mark among cases striking down legislation under Charter s. 2(a): see *R. v. Big M Drug Mart*. The legislative history considered in *Big M Drug Mart* showed clearly that the *Lord's Day Act* had no constitutionally permissible purpose.

> *R. v. Big M Drug Mart*, [1985] 1 S.C.R. 295

7. Indeed, Professor Peter Hogg identifies the *Lord's Day Act* as the only legislation struck down by the Supreme Court of Canada on the basis that its purpose was contrary to the *Charter*:

> The Lord's Day Act has the special distinction of being the only law to fail the purpose test in the Supreme Court of Canada.
>
> Hogg: Constitutional Law of Canada, Fifth Edition Supplemented (looseleaf, 2007) at p. 36-23

8. *Big M Drug Mart*, which was decided in 1985 and was one of the first cases on the issue of whether legislation impugned under the *Charter* was enacted for an improper purpose, has been distinguished and narrowly interpreted in later cases. In particular, the scope and limits of the "shifting purpose doctrine" – which is said to hold that the purpose of a statute is fixed at the time of its initial enactment, and cannot "shift" over time – have been clarified by later cases.

9. Significantly in the context of the present case, the legislation in question in *Big M Drug Mart* was clearly enacted for only one purpose, as identified in earlier cases and reiterated by the majority at para. 85 and 93: "the compulsion of sabbatical observance." As the majority summarized the matter at para. 78:

> A finding that the *Lord's Day Act* has a secular purpose is, on the authorities, simply not possible. Its religious purpose, in compelling sabbatical observance, has been long-established and consistently maintained by the courts of this country.
>
> *R. v. Big M Drug Mart, supra*, at para. 78

10. It is also significant that the religious object and purpose of the *Lord's Day Act* is what brought that law within the jurisdiction of the federal government to enact, on a division of powers analysis, under the criminal law power contained in the *Constitution Act, 1867*, s. 91(27). In the absence of a religious object, the *Lord's Day Act* would have been *ultra vires* the federal government, and the question of inconsistency with the *Charter* would have been moot. In other words, the very legislative objective that brought the *Lord's Day Act* within the federal government's power under s. 91 led to its demise under the *Charter*.

> Hogg: Constitutional Law of Canada, Fifth Edition Supplemented (looseleaf, 2007) at pp. 36-25 – 36-26

11. In contrast, in the present case:

(a) the validity, on a division of powers analysis, of *Criminal Code* s. 293 is not questioned; and

(b) there clearly was a secular and constitutionally permissible purpose, on a *Charter* analysis, behind the enactment of the predecessor to *Criminal Code* s. 293, principally the protection of women and children from the harms of polygamy.

12. The historical record, as set out in the argument of the AGBC, clearly demonstrates that s. 293 was directed to this secular purpose. There has been a tremendous volume of evidence adduced in this case to support the position that there have always been serious and substantial harms caused to individuals and to society as a whole as a result of polygamy. These harms include downward pressure on the age of marriage for young women and girls, the "lost boys" problem, as well as the other societal problems described in the submissions of the AGBC and the Attorney-General of Canada ("AGC"). These harms were recognized when the predecessor of s. 293 was first enacted.

13. In any event, hypothetically, if despite this overwhelming evidence the Court were to conclude that there was also a religious purpose for the enactment of s. 293 (which the evidence does not support) as a matter of law *Big M Drug Mart* would not support a finding that s. 293 should be struck down under *Charter* s. 2(a). As long as a permissible purpose existed when the legislation was enacted, the legislation should be upheld. To hold otherwise would be to create a doctrine of "incidental purpose" as a basis for striking down legislation that had as its principal purpose the prevention of harm.

**B. No "Shifting Purpose"**

14. Those challenging s. 293 of the *Criminal Code* suggest that s. 293 was originally enacted for a religious purpose. Their argument is that although s. 293 may have "acquired" a secular function over the ensuing 120 years since its enactment, this so-called "shifting purpose" should be ignored under the *Charter*. This argument is, with respect, unsupported by either the evidence or the law.

15. As a matter of historical record, the purpose of s. 293 has not shifted. The evidence shows clearly that the objective of preventing harm to women and children was identified by legislators when the predecessor of s. 293 was enacted.

16. Regarding the scope of the "shifting purpose" doctrine, as recently stated in *R. v. Levkovic* (2008), 235 C.C.C. (3d) 417 (Ont. S.C.), appeal allowed on other grounds 2010 ONCA 830, at para. 112:

> Just as "a particular type of conduct may involve several types of harm" (*R. v. Labaye*, 2005 SCC 80, (2006) 203 C.C.C. (3d) 170 at para. 38), depending on the circumstances, a piece of legislation will have a particular purpose or mix of purposes. While a particular legislative objective may no longer be defensible in light of the *Charter*, provided a rational and non-arbitrary purpose of the statutory provision remains the protection of society from harm in some identifiable measure, the shifting purpose rule may not be contravened. In other words, the originalism philosophy is not without its limits.

17. Moreover, if the details and significance of the relevant harms have become better understood and examples of those harms have been further demonstrated, through more than a century of experience with polygamy since s. 293 was enacted, this does not support an argument of unconstitutionality based on alleged "shifting purpose". In *Irwin Toy Ltd. v. Quebec (A.G.)*, [1989] 1 S.C.R. 927, Dickson C.J.C., speaking for the majority, explained and limited the scope of his own earlier judgment in *Big M Drug Mart* regarding "shifting purpose", at page 973:

> This is not to say that the degree to which a purpose remains or becomes pressing and substantial cannot change over time.

18. In considering the constitutionality of the *Criminal Code* provision prohibiting certain obscene materials, Sopinka J., speaking for the majority of the Supreme Court of Canada in *R. v. Butler*, distinguished *Big M Drug Mart* as follows:

> I do not agree that to identify the objective of the impugned legislation as the prevention of harm to society, one must resort to the "shifting purpose" doctrine. First, the notions of moral

> corruption and harm to society are not distinct, as the appellant suggests, but are inextricably linked. It is moral corruption of a certain kind which leads to the detrimental effect on society. Second, and more importantly, I am of the view that with the enactment of s. 163, Parliament explicitly sought to address the harms which are linked to certain types of obscene materials. The prohibition of such materials was based on a belief that they had a detrimental impact on individuals exposed to them and consequently on society as a whole. Our understanding of the harms caused by these materials has developed considerably since that time; however this does not detract from the fact that the purpose of this legislation remains, as it was in 1959, the protection of society from harms caused by the exposure to obscene materials.
>
> *R. v. Butler*, [1992] 1 S.C.R. 452 at para. 85

19. In the present case, the evidence of legislative purpose dating from the time the predecessor of s. 293 was enacted shows the law was directed at the perceived harms of polygamy. The evidence of harm presented in this case serves only to affirm that Parliament's purpose, and the concerns that underlay it, were well-founded. While our understanding of the harms associated with polygamy has evolved and advanced since 1892, the core purpose – the avoidance of harm to women, children and society – is not new and has not "shifted". It was there from the outset.

## C. Alternatively, the "Improper Legislative Purpose" Doctrine Requires Re-Examination

20. In the alternative, if this Court concludes that the purpose of s. 293 of the *Criminal Code* has, as a matter of fact, shifted over time, this case provides the Court with an opportunity to re-examine and clarify the operation and interplay of the purposes and effects of legislation as they affect the validity of that legislation under the *Charter*.

21. For example, in her judgment that concurred in the result in *Big M Drug Mart*, Madam Justice Wilson dissented on the issue of legislative purpose and its significance. Her Ladyship's approach focussed on the effect, rather than the purpose, of legislation impugned under the *Charter*. The subsequent narrow interpretation, in later cases, of the majority

judgment in *Big M Drug Mart* on the issue of legislative purpose indicates a willingness by the Supreme Court of Canada to reconsider the point. It also indicates increasing acceptance of the principles stated by Madam Justice Wilson.

22. The "shifting purpose doctrine", if applied literally, creates impractical and unnecessary obstacles to the implementation of the will of Parliament.

23. Indeed, if Parliament were to pass s. 293 for the first time today, knowing in more detail about the harms associated with polygamy, and with the purpose of preventing those harms, clearly Parliament would be acting within its constitutional power. The legislation could not be successfully challenged on the basis that it offended the *Charter* because of an improper religious purpose.

24. It would make no practical or legal sense for s. 293 to be invalid under the *Charter*, based on an allegedly impermissible purpose behind the enactment of its predecessor legislation, when the same legislation could be validly enacted by the same legislature for the first time today, in light of the evidence presented in this case and for the purpose of preventing the harms demonstrated by that evidence.

25. On its facts, *Big M Drug Mart* does not support an argument to the contrary. As noted above, the *Lord's Day Act* in question there depended for its constitutional validity, on a division of powers analysis, on the very religious purpose that led to the downfall of the legislation under the *Charter*. It simply was not open to the federal government to re-enact the *Lord's Day Act* with a different, secular stated purpose, namely to provide a day of rest. Such a legislative objective would have brought the law within provincial jurisdiction over property and civil rights, as was the provincial Sunday closing law upheld by the Supreme Court of Canada one year later in *R. v. Edwards Books and Art*, [1986] 2 S.C.R. 713.

26. To apply the "shifting purpose" doctrine as a basis for striking down *Criminal Code* s. 293 would be to extend that doctrine far beyond the ambit of the *Big M Drug Mart* case as set out above. A so-called principle of constitutional interpretation that leads to absurd and impractical results – and which risks striking down legislation apparently approved by the

current Parliament (because it has not been repealed) on the basis of the Court's understanding of what the members of a previous Parliament might have intended over a century ago – would itself be constitutionally suspect.

27. In any event, as noted above, it is submitted that the purpose behind s. 293, namely preventing the harms caused by polygamy, was and is a valid and permissible objective in light of the *Charter*. On the legal principles set out above, any challenge based on alleged improper purpose should fail.

## D. Religious Beliefs Do Not Immunize Harmful Activities from *Charter* Scrutiny

28. The importance of focussing on the effect of a law, rather than its legislative purpose, is highlighted by the well-established principle that freedom of religion under s. 2(a) of the *Charter* cannot be used to strike down a law where the law's effect is to protect others from harms that would otherwise be caused by the religious practice in question.

29. It is established law that to the extent a religious practice causes harm, that practice is not protected by *Charter* s. 2.

*Young v. Young*, [1993] 4 S.C.R. 3 per McLachlin, J., at para.'s 31 – 33.

30. It is not necessary that actual harm be suffered by a member of the society, in order to negate an infringement of s. 2. Simply increasing the risk of harm, or creating a threat of harm, is sufficient to negate the application of s. 2.

*Young v. Young, supra*

31. Therefore, all that is necessary, in order to determine that s. 2 has not been infringed, is to demonstrate that the practice of polygamy in the religious context increases the risk or threat of harm to members of that society.

32. Based on the evidence adduced in the hearing, there are well established harms caused by polygamy. For example, according to Prof. Henrich, it is entirely predictable what would happen in a polygamous society; there would be a shortage of marriageable men, we would expect to see downward pressure on the age of marriage for girls, there would be higher rates of serious crime, and other societal problems. Consistent with these predictions, the increased frequency of these harms was clearly established in the evidence, *i.e.*, the theory is borne out by the facts. These harms are highlighted by the evidence relating to the FLDS, such as the lost boys phenomenon, marriage of 13-year-old girls, statistical evidence of higher rates of teen marriages, etc. They are also highlighted by evidence of harm to women and children in polygamous Muslim communities (see Stickevers affidavit).

33. The harms are nontrivial, they are serious, and substantial. On that basis, s. 2 of the *Charter* is not engaged.

34. There was some evidence that there may be certain individuals who do NOT suffer harm as a result of living in a polygamous community or relationship. The evidence of Prof. Campbell, the anonymous witnesses from Bountiful, and the polyamorists were all intended to prove this one point. In fact, all of the evidence from those witnesses can be summarized in two sentences:

(a) there may be certain individuals who do NOT suffer harm as a result of living in a polygamous community or relationship;, and

(b) the criminalization of polygamy may create harm itself.

35. The second point is dealt with in the section below. With respect to the first point, however, even if one were to accept the proposition that some individuals may suffer no harm themselves, it is entirely irrelevant. Lack of actual harm to a member of the community is not the test with respect to negation of an infringement of s. 2. Simply increasing the <u>risk</u> of harm, or creating a <u>threat</u> of harm, is sufficient to negate the application of s. 2. Also, there are broader harms that affect society as a whole, even if some individuals are not harmed. The small

percentage of individuals who suffer no harm are bound by the law in any case. (*Young v. Young, supra).*

## III. CRIMINAL PROHIBITION DOES NOT CAUSE SUBSTANTIAL HARM

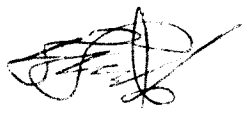
36. The Amicus tried to establish through the evidence of the anonymous Bountiful witnesses is that harm is suffered because the criminalization of polygamy prevents people from accessing social services.

37. Criminalization of any activity marginalizes the criminal, and makes life more difficult for him or her. That is no reason not to criminalize behaviour. For example, a person running an illegal so-called chop shop, where stolen cars are cut up and sold for parts, might be hesitant to call the fire department if there was cause for alarm on the premises. Doing so might alert the authorities to his illegal behaviour. Yet we would never consider making such operations legal in order to remove the disincentive to call for assistance. Furthermore, the law itself would not be declared invalid on the basis that criminalizing a particular behaviour puts the criminal in a position where he or she is afraid to deal with civil authorities.

38. In any event, the evidence of the anonymous Bountiful witnesses did not prove that individuals were reluctant to access social services.

All of which is respectfully submitted

March 4, 2011



Counsel for Stop Polygamy in Canada

## IV APPENDIX - WITNESS SUMMARIES

SPC does not propose to summarize all of its tendered evidence. However, we include brief summaries of several affidavits tendered by SPC, as well as one witness who was cross-examined by counsel for SPC.

### Laura Chapman

Laura Chapman is a social worker who has spent much of her career assisting women and children victims of abuse. For the past 12 years, she has educated others about the effects of polygamy and in 2002 she gave a presentation to the United Nations Women's Conference on the human rights violations caused by polygamy. That same year she received the Robert F. Kennedy Human Rights Award for her work in raising awareness of polygamy issues. As a practising social worker and consultant in Denver, Colorado, she currently advises government officials, social workers, judges and others on the dynamics of polygamy.

Ms. Chapman has an intimate understanding of the harms caused by polygamy because she has experienced and overcome them in her own life. She was raised in a polygamous FLDS suburb near Salt Lake City, Utah, and with one father, four mothers and 31 brothers and sisters, Ms. Chapman was homeschooled on a curriculum that centred on FLDS scripture. Like all of the other children she knew, she spent much of her time attending church at the home of Rulon Jeffs, father of Warren Jeffs, and she was indoctrinated from an early age to be obedient and dedicated to the practice of polygamy. Everyone that Ms. Chapman knew was a polygamist, and she was not allowed to communicate with anyone beyond her community. After marrying a family member of Warren Jeffs and giving birth to five children, she eventually escaped polygamy.

Ms. Chapman's affidavit provides a glimpse into an insular society and it describes the serious harms that are caused by polygamy. Among other things, her evidence includes the following:

1) Marriage into polygamy is rarely a choice for young women. Girls in her community were given as little as several hours notice before being married to a man they had often never met;

2) Although girls were typically married by 15-18 years old, the men they were told to marry ranged in age and could be as old as their grandfathers. As an example, her 17-year old sister was told to marry a 70-year old man and did so;
3) Some girls are married at very young ages, and even below the age of consent. When this happens, parents are complicit. For example, her middle-aged brother-in-law, Warren Jeffs, married a 12-year-old girl whose parents encouraged the marriage;
4) Young women are often exported to become wives in other polygamist communities or in other countries. For example, her 16-year old niece was exported from Utah to become the third wife of a 48-year old man in Bountiful, B.C;
5) Incest was common. For example, in her ex-husbands family, one uncle married his niece, two brothers and a sister married their first cousins, and three sisters married second cousins;
6) She witnessed abuses to women and children, and knew of at least 20 families in which fathers were molesting their own children. In some cases these men were protected by FLDS leaders. However, until she received counseling (against her husband's wishes) she had not realized that these actions were abnormal;
7) She was taught that failure to abide by polygamy could be punished and that physical violence was justified against anyone who spread a negative view of polygamy. When she eventually reported crimes of sexual abuse to child protective services, she left her community under fear of being killed.

**Professor Marci A. Hamilton**

Professor Marci A. Hamilton, the Paul R. Verkuil Chair in Public Law at the Benjamin N. Cardozo School of Law at Yeshiva University in New York City, provided two expert reports for the assistance of the Court.

In her first report, dated July 16, 2010, Professor Hamilton traced the development of United State laws criminalizing or otherwise prohibiting the practice of polygamy. As she points out, while the prevalence of polygamy among followers of the Church of Jesus Christ of Latter-Day Saints in the 1880s may have highlighted the issue, the practice of polygamy had already long been prohibited by the common law, and had already been prohibited by statute in all then-

existing American states. The laws extending to the Utah Territory the criminal prohibition of polygamy did not target Mormons, or even religiously-motivated polygamy, but rather outlawed it whether it was practiced in a secular or religious context.

She then turned to the constitutional attacks that have been mounted from time to time against the prohibitions, and discussed why these attacks have consistently failed. The United States Supreme Court, lower federal courts, and the state appellate courts have all consistently rejected claims that the generally applicable statutory prohibition of polygamy infringes the constitutional rights to enjoy free exercise of religion, due process (including a right to privacy), or the equal protection of the law. The common thread of these conclusions is what Professor Hamilton identifies as the principle that "licentious behavior", or immoral conduct, is not constitutionally-protected. This conclusion has striking parallels to the Canadian context where, as explained elsewhere, including in the AGBC's submissions, conduct that is objectively harmful to others or to society generally does not attract *Charter* protection.

In her second report, dated November 1, 2010, Professor Hamilton responded to the reports of Professor Jonathan Turley and Professor Martha Ertman, each of whom had prepared reports, at the request of the Amicus, in which they suggested that the United States' prohibition of polygamy would not pass constitutional muster. Professor Hamilton showed that Professors Ertman and Turley had, in attempting to show that the statutes unconstitutionally targeted Mormons, conflated the polygamy provisions of those laws with other distinct elements of those laws (and had ignored that polygamy was already illegal in every state and under common law long before laws specific to the Utah Territory were enacted). As she puts it, "the criminalization of polygamy was neither novel nor crafted to apply solely to Mormons." Consistent with the conclusions reached by United States courts for decades, it is Professor Hamilton's opinion that the prohibition of polygamy is not constitutionally suspect under United States law.

**Dr. Susan Stickevers**

There has been very little evidence adduced in this hearing regarding the harms associated with polygamy within Muslim communities in North America. However, one affidavit deals directly with this aspect of the case. Dr. Stickevers is medical doctor licensed to practice in the State of New York. Her medical practice in NYC has caused her to treat 18 women who were in polygamous relationships from 1990 – 1999. All of these women were Muslim, living in New York, and married (as one of several wives) to Muslim men. She refers to them as her "polygamous female patients". Her evidence includes the following:

a) the majority of Muslim men do not obtain their first wife's consent for subsequent marriages.

b) As part of her routine practice in Pain Medicine assessment of patients, she obtains psychometric testing. As a result of such testing, she has found that women in polygamous marriages exhibit a variety of psychological problems, including higher rates of depression, anxiety, and lower self esteem than women in monogamous relationships.

c) As a result of her literature review (which includes the peer-reviewed articles appended to her affidavit), she has found that research by other medical and psychology professionals is consistent with the findings based on her clinical practice. These articles show that polygamy is associated with the effects listed below.

- Higher rates of depression in senior wives in polygamous marriages
- Higher rates of anxiety in senior wives in polygamous marriages
- Higher rates of psychiatric hospitalization and outpatient psychiatric treatment for polygamous wives
- Higher rates of marital dissatisfaction for polygamous wives.
- Lower levels of self esteem observed in wives in polygamous marriages.
- Lower levels of academic achievement and more difficulty with mental health and Social adjustment in the children of polygamous families

There is no reason to believe that Muslim women in New York would exhibit different symptoms or problems than Muslim women in Canada. It is submitted that these same problems must therefore exist within the population of polygamous Muslim women in Canada.

**Professor Angela Campbell**

Prof. Angela Campbell interviewed 22 women in Bountiful, over a period of just a few days. Her testimony is extremely limited in terms of reliability and usefulness. Her methodology was flawed and her expertise in conducting such interviews was extremely poor:

1. Lack of expertise (going to weight) the research that she conducted was sociological in nature. However, she has no training in sociology, anthropology, psychology, or ethnography. [Nov. 30; p. 26 l. 42 – p. 27, l. 22], and no formal training in qualitative research methodology [p. 27 ll. 39 – 43]. She required the assistance of a student [sociology, undergraduate] to carry out the study [p. 29, ll. 39 – 45]. She could not remember the name of the author of the textbook on qualitative methodology relied upon by her student [p. 30, l. 39 – p. 40 l. 6]. She was not familiar with the International Institute for Qualitative Methodology, even though it is based in Canada [p. 43 ll. 25 – 27].

2. Professor Campbell was aware, prior to conducting her field work in Bountiful, that the community and/or the FLDS had a reputation for secrecy and deception [p. 33 l. 41 – p. 34 l. 17.] Yet she considered it appropriate to believe everything that she was told by the women she interviewed was true and authentic. [p. 35 l. 33 – p. 34 l. 9]. She did not know how to filter the statements of the interviewees [p. 49 ll. 3 – 8]

3. Phenomenological research, according to Creswell, requires an extended and prolonged engagement in the community. Prof. Campbell admitted that she considered her research to be phenomenological [p. 37 l. 38 – 47] and admitted that did not conduct extended and prolonged research as that is understood by sociologists [p. 34 l. 45 – p. 35 l. 6]. When confronted with Creswell's definition of phenomenological research, she then tried to say that her engagement in the community was extended and prolonged, because it included the time she was planning to spend there. [p. 38 l. 35 – p. 39 l. 35].

4. Professor Campbell admitted that there were absolutely no conclusions that could be drawn, based on her research, with respect to Bountiful as a whole, the Blackmore faction, or any individual outside of the group she interviewed [p. 41 l. 37 - p. 42 l. 4]. She conceded that the "narratives" are not necessarily representative, or even authentic. Despite these admissions, her affidavit is replete with generalizations about the "experiences of women in Bountiful". In fact, she explicitly states in her affidavit that she believes her participant pool "offers a sound representation" of those experiences. [p. 45, ll. 25 – 35]. She refused to acknowledge this obvious contradiction.

5. She admitted that it would have been typical to "triangulate" her data by checking vital statistics for the community in order to verify what she had been told, but she did not do so [p. 42 l. 37 – p. 43 l. 8].

6. Despite being given sound advice by her undergraduate student with respect to interview techniques [*e.g.* the interview should not be a vehicle for the interviewers agenda, reinforcing responses should be avoided, questions should be open ended, leading questions should be avoided [p. 47 – 48], a careful review of her interview notes shows that she violated these principles consistently.

7. Professor Kent, who is a professor of sociology with great experience dealing with groups of this nature, spoke about the dangers of conducting interviews in this environment. He discussed how these groups tend to "clean up" before allowing outsiders to speak with them, and how the fear of repercussions and punishment may cause the interviewees to paint a rosy picture. Professor Campbell did not take any steps to deal with this concern. [p. 50, ll. 12 – 29].