

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. 1986, C. C-46

**AFFIDAVIT OF JOHN R. BASHINSKI**

I, John Robert Bashinski, of Montréal, Québec, MAKE OATH AND SAY AS FOLLOWS:

1. I have personal knowledge of the facts and matters hereinafter deposed to, save and except where same are stated to be made on information and belief, and where so stated, I verily believe them to be true.
2. Statements in the remainder of this affidavit regarding the understandings, agreements, beliefs, and mental states of my conjugal partners are based upon a lengthy relationship of trust with each of them, upon discussion with them, upon their explicit promises to me, and/or upon my direct observation of their behaviour and attitudes over a long period in an intimate conjugal setting, as well as upon their review of the text of this affidavit. I verily believe these statements to be true.
3. I make this affidavit in support of the Canadian Polyamory Advocacy Association's intervention in this Reference.

**Affiant**

**Identity and background**

4. I am 47 years old, having been born in Oakland, California, in the United States of America, on February 22, 1963.
5. I have been a resident of Montréal, Québec since April of 2007.
6. Before moving to Montréal, I was a lifelong resident of California, in the United States of America.
7. I hold Bachelor of Arts degrees in Mathematics and Computer Science from the University of California at Berkeley, California.
8. I am a United States citizen, living in Canada on a work visa. I intend to apply for permanent residence in Canada, and eventually to become a citizen of Canada.

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9. I am employed by a major worldwide provider of data networking equipment and associated products and services.
10. I am a Director of the Canadian Polyamory Advocacy Association, but speak in this affidavit in my personal capacity.

### **Previous marriage**

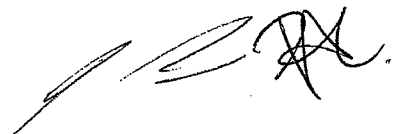
11. I am legally divorced, having been married while residing in California from 1985 through 2006. My ex-wife and I decided to end our marriage in late 2005, for reasons of loss of emotional intimacy. Our divorce became final in early 2007.
12. My previous marriage was a polyamorous arrangement in which both partners had other romantic and sexual involvements, but was not a multiple conjugal arrangement.
13. I do not believe that polyamory contributed to the dissolution of my previous marriage. My ex-wife and I parted on friendly terms, and remain on friendly terms.

### **Polyamorous orientation**

14. I have been practising polyamory since before the term gained currency. When my ex-wife and I began our marriage, we referred to what we were doing as "open marriage".
15. I have never felt any identification with the expressions of romantic or sexual jealousy in the culture around me. Although I am capable of feeling neglected and of being hurt by abandonment, I have never felt angry or hurt simply because a partner had other partners, nor have I ever asked a partner to promise not to do so. Although I recognize that it is the norm and accept that it is to be respected, I have great difficulty empathizing with such jealousy in others.
16. Although at a visceral level polyamory seems to me the natural order of things, I do not believe that anyone is under any positive moral or ethical obligation to practice polyamory, nor do I believe that feelings of jealousy are either affected by or a proper subject for moral argument.

### **Relationship to religious and traditional groups and attitudes**

17. I was raised in a household in which religion was not practised and was rarely discussed.
18. I am now, and have been during the majority of my life, an atheist. I have never held any creed associated with any organized religious group, nor have I ever been a member of such a group.
19. During my childhood, I was taught to see men and women as equal in dignity, in intelligence, in ability, in worth, and in entitlement to autonomy, and indeed to power. These attitudes were consistently demonstrated by both of my parents. I have retained these beliefs and attitudes throughout my lifetime.

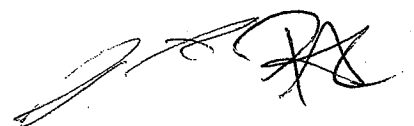
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## **Family**

20. I am presently in what I consider to be a conjugal relationship with two other adults. They are Kimberly Ann Joyce and Warren James Baird. We have been in such a relationship since approximately July 25, 2007.
21. Before my joining with them, I believe that Ms. Joyce and Mr. Baird had been in a conjugal relationship with one another for approximately 12 years.
22. Both Ms. Joyce and Mr. Baird are by birth citizens of Canada, and have been residents of Canada throughout their lives.
23. Ms. Joyce is 33 years old, having been born in Toronto, Ontario on March 4, 1977.
24. Mr. Baird is 39 years old, having been born in Prince Albert, Saskatchewan on December 25, 1970.
25. Ms. Joyce is occasionally self-employed as a seamstress and clothing designer, but is primarily occupied with child care and household concerns.
26. Mr. Baird is employed as a Product Manager by a major worldwide provider of computer software and related equipment and services.
27. For brevity, I will refer to Ms. Joyce, Mr. Baird, and myself collectively as "our triad".
28. Our triad is bringing up a child, Kaia Gwynn Baird ("Kaia"), who is the legal and biological child of Ms. Joyce and Mr. Baird.
29. Kaia is 2 years old, having been born in Montréal on July 24, 2007.
30. For brevity, I will refer to our triad and Kaia collectively as "our family".

## **History of our triad and my involvement in it**

31. It is my understanding that the arrangements between Ms. Joyce and Mr. Baird, at all times before the formation of our triad and of interest in this history, contemplated and permitted their having other sexual and romantic partners.
32. In 2000, I made frequent and extended visits to Montréal as part of my work. I was introduced to both Ms. Joyce and Mr. Baird in Montréal. I developed a friendship with both Ms. Joyce and Mr. Baird, and a sexual relationship with Ms. Joyce. I thereafter returned to Montréal on a regular basis to see Ms. Joyce, Mr. Baird, and other close friends.
33. Roughly in early 2005, my emotional and sexual relationship with Ms. Joyce became increasingly intense and "serious".
34. In late 2005, Mr. Baird and Ms. Joyce began planning to have a child. After two miscarriages during 2006, Ms. Joyce became pregnant with Kaia in November of 2006.



35. Having agreed with my ex-wife to end our marriage, I desired a change in surroundings. Having strong attachments in Montréal, I resolved in 2006 to move there. I did not at that time intend to form a conjugal relationship with Ms. Joyce or Mr. Baird. I was uncertain what relationship I would have, or wished to have, with the child I then thought of as theirs.
36. Although it was not yet clear to me what our future relationship would be, I made a point of becoming established in Montréal before Kaia's birth.
37. After my arrival, I spent a great deal of time with both Ms. Joyce and Mr. Baird. Our relationship grew closer, and we began to think seriously about my becoming a member of the family, rather than simply an "outside" romantic relationship of Ms. Joyce. Knowing that I would be present for Kaia's birth, we attended prenatal classes together. The three of us continued to discuss and negotiate our future relationship, with special concern for the relationship between me and Kaia.
38. I hesitated to take on a major commitment so soon after the loss of the marriage I had seen as permanent and unchangeable. I leaned increasingly toward joining the family, but felt a need for absolute certainty in a matter of such importance.
39. Kaia was born several weeks prematurely, forcing me to slightly hasten my decision. Immediately after her birth, I completed my analysis of the situation, and asked to be accepted as a full member of the family and as a true parent to Kaia.
40. My proposal was accepted immediately by both Ms. Joyce and Mr. Baird. I took this to mean, and still take it to mean, that they had anticipated my proposal. Our triad came together within one to two days after Kaia's birth. The general substance of our agreements was finalized in the next few days, and has not changed since then.
41. Our triad began to cohabit immediately upon Kaia's return from the hospital, living in the house then owned by Ms. Joyce and Mr. Baird. From my arrival in Montréal until the formation of our triad, I had been living in a separate apartment. I continued to rent that apartment for the duration of my lease on it, primarily as storage space for my belongings. I did not in fact reside in that apartment after the formation of our triad.

### **My reasons for joining the family**

42. I proposed creating our triad and joining our family for these reasons:
  - a. I was already deeply involved with the other triad members, and especially so with Ms. Joyce. I wished to continue this involvement. Furthermore, independent of all other matters including Kaia's birth, I believed that a triad would be a good option for all of us.
  - b. I believed that, if our relationship were to continue, I would unavoidably find myself closely involved in Kaia's daily life, that she would therefore come to love me and to see me as someone to be relied upon, and that I could make a unique and valuable contribution to her upbringing.

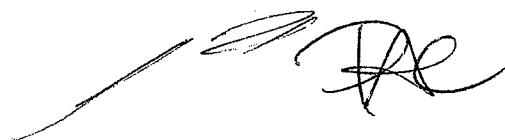
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- c. I believe that permitting a young child to depend upon one creates a lasting obligation to that child. Conscience required I choose either to become a permanent family member, or to distance myself enough that Kaia would definitely not see me as such.
- d. I believe that, having formed a deep emotional bond with Ms. Joyce, and having encouraged her to form a reciprocal bond with me, I could not in conscience either abandon her, or reduce my involvement with her, lightly or without clear reason. I saw no such clear reason.
- e. My joining the family was thus the most likely course to contribute to the happiness and general well-being of all involved, and the only course which clearly met all of my moral obligations.

## **Elements of Conjuality**

### **Self-Image and Commitment**

- 43. Each member of our triad sees each of the others as a lasting and committed conjugal partner. Among ourselves and with others, we refer to each other using the words "husband", "wife", and "partner".
- 44. Although we do not see any relationship as absolutely indissoluble, our understandings and agreements include
  - a. an intent to stay together indefinitely;
  - b. an accord to work through even major relationship problems rather than to dissolve the triad;
  - c. an understanding that our relationship will persist regardless of circumstantial changes, such as changes of health, changes of financial circumstances, and changes of work;
  - d. an obligation of affirmative concern, in all our actions, for the stability of the family and for the desires, concerns, feelings, and well-being of all family members; and
  - e. an obligation of continuing financial support for an appropriate period of time should the triad be dissolved.
- 45. Each of our triad sees and acts toward Kaia as a daughter. Independent of the adults' commitments to each other, each of us accepts irrevocable responsibility for Kaia's care and well-being, at least until she reaches her majority and lifelong if needed.
- 46. The major arrangements and understandings under which we conduct our affairs are products of careful consideration and of active negotiation. Although they are subject to change or renegotiation with changes in circumstance, we believe and agree that they are not to be lightly or easily modified, and that they are not to be changed by any of us unilaterally.



### **Child rearing**

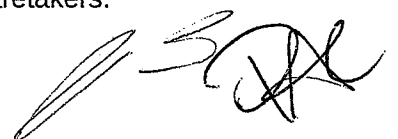
47. Each of our triad is given equal voice in Kaia's upbringing.
48. Each of our triad participates directly and regularly in Kaia's care.
49. Financial support for Kaia's needs comes from funds pooled by our triad.
50. Kaia has been encouraged throughout her life to see each of our triad as a parent, without distinction between the three, and I believe that she does in fact so see each of us. Mr. Baird is "Daddy". I am "Papa".

### **Extended family relationships**

51. The general nature of our conjugal relationship is known to the near legal and biological relatives of each of us. We do not conceal any information about our relationship from relatives.
52. Legal and biological relatives have been encouraged to treat our triad and Kaia as they would any family member together with his or her spouse and children. In substance, they in fact so treat us. I believe that many or most of them see us as legitimate family members. Any who disapprove have not expressed their disapproval to me.
53. None of our triad is estranged from any of our legal and biological relatives, and we routinely participate together in family events as family members.
54. The living parents of each triad member have been encouraged to treat Kaia as a granddaughter. They act toward her in ways which I consider to be appropriate for this role. Kaia has been encouraged to see all of them as grandparents, and I believe that she so sees them.

### **Community relationships**

55. All, or substantially all, of our triad's friends and close acquaintances know the general nature of our conjugal relationship.
56. Many other members of the local community know of our conjugal relationship. This includes the operators of Kaia's day care facility, parents of other children attending that facility, certain staff of local businesses we frequent, contractors, tradesmen, and domestic service providers working in our home, and others.
57. As a matter of general policy, I do not attempt to conceal the conjugal nature of our triad or family. Although there are circumstances in which I seek to avoid mention of our family structure, such circumstances arise primarily in interactions with government officials, and in any case not frequently or as part of my daily contact with community members. I believe that this is also true for the other members of our triad.
58. Our family structure is an occasional subject of conversation with strangers or casual acquaintances, for example in parks or local cafes. Such conversations are often brought about by a community member's noticing that Kaia is seen with different caretakers.

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59. Many of my and Mr. Baird's co-workers know the general nature of our conjugal relationship. Although I do not usually volunteer the information to co-workers, I do not take active steps to conceal it from them, nor do I avoid the subject if it naturally arises. I believe that Mr. Baird takes a similar approach.
60. Our family frequently interacts as a social unit, attending and hosting events together, and is frequently invited to events as a unit. Each member also has a social life as an individual.
61. I believe our triad's social function and position to be similar to that of a married couple.
62. We are integrated with the local community. While we have many polyamorous friends, we are also engaged with our neighbours and with the rest of society. We have found that most community members who actually know us accept us and treat us appropriately.

### **Cohabitation**

63. All of our family reside in the same house. Each sleeps the overwhelming majority of his or her nights and takes the majority of his or her meals in our residence.
64. Each family member has his or her own bed and bedroom in our residence. In addition, Ms. Joyce and I each have a room designated as a private office. Nonetheless, our cohabitation is of an intimate nature, involving the general welcoming of and expectation of one another's presence during private times and activities.
65. Domestic duties are shared according to a flexible and informal division of labour.
66. A relatively formal biweekly schedule is used to structure our family's daily life. This schedule includes large blocks of time for the family to spend together, undisturbed personal time for each adult, time spent by each adult alone with Kaia, and "date nights" outside the home for Ms. Joyce with each of the male triad members.

### **Sexuality and emotional attachments**

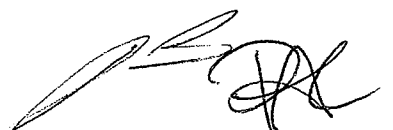
67. Each of Mr. Baird and myself has an ongoing sexual and romantic relationship with Ms. Joyce.
68. There is no significant sexual relationship between Mr. Baird and myself.
69. Although Mr. Baird and I regard one another as life partners, and would remain such if Ms. Joyce were somehow removed from the family, we have significantly stronger romantic connections with Ms. Joyce than with one another.

### **Financial interdependence**

70. The members of our triad are substantially interdependent for financial support, and our financial affairs are commingled in significant ways, as described in detail below.

### **Ceremony**

71. No rite or ceremony has been conducted to celebrate or confirm the formation of our triad, and we have no fixed plan to conduct such a rite or ceremony.



## **Other**

72. Our family frequently travels together. Most of our recreational travel involves the entire family.

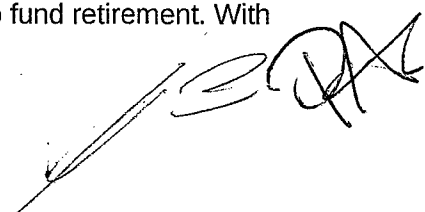
## **Internal family arrangements**

### **Family decisions**

73. Significant decisions affecting our family as a whole, or affecting Kaia, are made by the members of our triad as a group. We have no formal decision procedure, but our established practice is to negotiate to consensus whenever possible. We rarely if ever resort to voting; I have no actual memory of our ever having voted on an issue.
74. Each member of our triad is seen by all as having an equal right to contribute to decisions. We seek to avoid any member's opinion or concerns going unheard or being ignored.
75. In general, we give greater weight to the views of the triad member(s) most affected by a decision, with the strongest views about the decision, and/or with the greatest applicable knowledge and expertise. This is achieved primarily by voluntary deference on the part of the other triad members.
76. No triad member's opinions receive systematically greater or lesser weight than those of the others. None of us is designated or perceived by any of us as the "head" of our household.
77. On rare occasions when two triad members have opposing views, the third may act as a mediator between them. No member is more or less entitled to this role than are the others, and the function is seen as one of mediation rather than of arbitration.
78. As she matures, we intend to give Kaia an appropriate and increasing voice in family decisions.

### **Financial**

79. Our triad pools the majority of its income, including all net salary income. The overwhelming majority of money spent by any of our family in daily life comes from these pooled funds.
- a. Pooled funds meet domestic expenses, Kaia's expenses, utilities, household insurance, house and vehicle upkeep, property taxes, family vacations, and similar expenses.
  - b. Each triad member receives an equal personal allowance from pooled funds. These allowances are used for personal items, clothing, personal luxuries, gifts, and similar expenses.
  - c. An equal share drawn from pooled funds is periodically deposited in investments for each member of our triad.
80. Each member of our triad maintains separate savings and other investments. Interest, dividends, and capital gains from each member's investments are rolled back into that member's investments. Our shared expectation is that such investments are to fund retirement. With

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certain specific exceptions, any money taken from such investments to be "spent", as opposed to "reinvested", is expected to be, and is in fact, placed into the common pool.

81. Our triad owns our family's residence as tenants in common. Each member's share is treated as part of that member's separate investments.
82. Members of our triad own two vehicles. The vehicles are informally treated as a common resource. We anticipate that future vehicles will be owned in common by all members.
83. Essentially all of the income placed into the common pool is derived from the following two source, each of which is roughly similar in amount:
  - a. My own income from my employment, reduced by the amount of spousal support payments to my ex-wife.
  - b. Mr. Baird's income from his employment.
84. Both our income and our assets are substantial. Our family gross employment income exceeds one hundred fifty thousand dollars per year. Our family net worth exceeds one million dollars.
85. None of us is or ever has been indigent, and none of us receives or has ever received any form of governmental or charitable financial assistance intended for the poor or indigent.

**Death, incapacity, and dissolution of the triad**

86. We are in the process of making legal provisions for the great majority of each triad member's assets to pass to other members of our family, or to trusts or similar arrangements benefiting other members of our family, upon his or her death.
87. Each triad member is in the process of taking the steps available under Quebec law to give the others primary control over his or her care and affairs in the event of his or her incapacity.
88. Ms. Joyce and Mr. Baird are in the process of preparing mandates for my legal guardianship of Kaia should they die or become incapacitated.
89. We have investigated the possibility of securing legally enforceable parental rights for all three of Kaia's parents, but have been advised that this is not feasible under current law without legal expenditure which we would consider to be imprudent, and that success would not be guaranteed regardless of the expenditure.
90. Under our agreements and as a matter of practicality, it is possible for any of us to leave the triad, thus reducing it to a couple or to three single persons. We agree that such an action would be a final resort, comparable to a monogamously married person seeking a divorce.
91. We have established an agreement regarding ongoing support for triad members, and particularly for Ms. Joyce, in the event of dissolution of our triad or death of a triad member.

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92. We have agreed that dissolution of our triad would not reduce any of our obligations or privileges toward Kaia.

### **Sexuality, relationships, and issues specific to polyamory**

93. We deliberately provide opportunities for sexual and romantic expression within our triad. However, we never consider any member of our triad to be sexually obligated to any other member.
94. We regard each of us as free to engage in sexual and romantic activity with persons outside our triad within the following limits:
- a. The well-being of our family and its members is of primary concern, and outside relationships are to be guided away from paths significantly threatening to our family.
  - b. In choosing and conducting outside sexual or romantic relationships, we exercise affirmative concern for the wishes, concerns, and well-being of all involved, including our family members, the other participants in the outside relationships, and those associated with them.
  - c. We exercise certain agreed-upon precautions for avoiding pregnancy and sexually transmitted diseases in our outside relationships.
95. We recognize the possibility of adding further adults to our family, on an equal footing with the existing members of our triad, but regard this as improbable because of our stringent requirements. Beyond simple personal compatibility--
- a. Any new conjugal partner would have to be actively desired by all three existing members of our triad, and would him- or herself have to desire to join our family.
  - b. Any such person would have to be prepared to act as a parent to Kaia, and to make a permanent commitment to act as such.
  - c. We would have to be convinced that Kaia could reasonably be expected to accept such a person as a parent, and that such a change would be good for Kaia, or at least would not be significantly harmful to her.
  - d. We would have to be convinced that the change did not pose a significant risk of destabilizing the family and leading to its future dissolution.

### **Impact of the family and its structure**

#### **Impact on myself and other triad members**

96. Our family is by far the greatest source of my daily pleasure and contentment, and is one of the most personally and emotionally valuable elements of my life. My partners are my best friends,

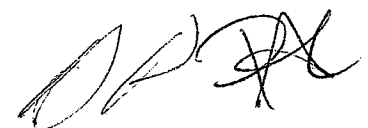
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and my most valued sources of guidance and emotional support. Our daughter is a constant joy precious to me beyond explanation.

97. Our home is a pleasant and harmonious environment in which each of us feels comfortable and valued. The overwhelming majority of interactions within our family are positive ones which contribute to emotional well being, and each of us consistently seeks to contribute positively to the emotional well being of other family members.
98. The members of our family are my most important impetus for engagement in the larger community.
99. My membership in our family is a defining part of my personal identity.
100. Our family serves as a valuable "safety net" against personal or economic hardship. I have complete reliance in our family's support, and I believe that my partners feel likewise.
101. We are concerned that Ms. Joyce has limited earning ability, and is financially dependent upon me and Mr. Baird. However, our family mitigates this concern in comparison to a comparable monogamous arrangement. Neither Mr. Baird nor I is Ms. Joyce's sole source of financial support. The death or departure of one of us would not put her into poverty. Any temptation to use money as a source of undue power for one member of the relationship is reduced by the presence of a second income earner. Both Mr. Baird and I have encouraged Ms. Joyce to build her business, and have offered her support and assistance in doing so.
102. I do not believe that I or any triad member experience any harm from loss of sexual or romantic exclusivity, nor indeed would I characterize it as a "loss".
103. I believe that the other members of our triad have experiences and beliefs similar to my own with respect to the impact of our family.

### **Impact on Kaia**

104. Independent of any considerations unique to multiple conjugal partnership, our family is a stable, healthy, loving one which contributes to Kaia's emotional security, ensures her physical well being, promotes her healthy development, and provides her with models of appropriate, positive, moral, and effective behaviour.
105. The roles and authority of all three of Kaia's parents are clearly understood and consistently explained, modelled, and enforced by all of the important adults in her life.
106. All indications are that Kaia accepts and dearly loves all three parents.
107. Thus far, I believe that Kaia has been significantly better served in our three-parent family than she would have been in an otherwise similar two-parent family.

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- a. The three members of our triad are able to give Kaia more parental attention than could any two of us. She spends more total time interacting with parents, and there is more time and energy for activities that contribute to her enjoyment and to her development.
- b. Each parent nonetheless has more personal time, and I believe that each experiences less parental stress. Because of this, and because there is more "backup", Kaia is rarely presented with a distracted, cross, irritated, exhausted, impatient, or overwhelmed parent, and I believe this results in a better quality of parental attention as well as a greater quantity. Our triad often jokes that we "don't know how those dual parent families manage".
- c. Each parent brings talents, skills, knowledge, and personal characteristics which the others do not have, and applies these to Kaia's care and education in ways which the others could not match. I believe that Kaia would be poorer for the loss of any of us.
- d. I believe that Kaia has benefited from exposure to the negotiation and relationship skills which our triad have learned from living in polyamorous arrangements and from participating in the polyamorous community.
- e. Kaia has enjoyed greater material opportunities because of the higher income and more efficient sharing of expenses provided by a three-adult household.

108. I anticipate that the above mentioned benefits to Kaia of our three-parent family will continue as she grows older. I expect that she will, as she matures, experience additional benefits of our family structure and its connection to polyamorous community norms, which benefits have not yet come into play. These include--

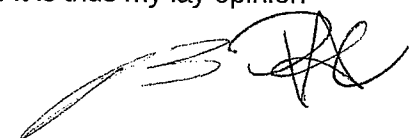
- a. An intimate view of positive relationship negotiation among multiple adults, in a relatively open-ended context which demands self-examination and clear articulation of desires and emotions. I believe that this will provide Kaia an expanded view of the available relationship possibilities, a greater repertoire of ways to negotiate satisfactory arrangements while avoiding or productively resolving conflicts, enhanced facility in understanding her own emotions, and a greater ability to define and defend her own sexual and relationship boundaries. These skills, coupled with her exposure to diverse negotiated roles, are likely to advantage her over her peers in the ability to arrive, in her own adult relationships, at roles which are well suited to her and to her partner(s).
- b. Life experience likely to lead her to critically examine cultural expectations concerning monogamy and relationship structures. I believe that Kaia is likely to have a more detailed, nuanced, and explicit understanding of those expectations than will most of her peers, and that this understanding will serve her well regardless of the relationship structure(s) she herself chooses to pursue.

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- c. Greater access to opportunities afforded by parents' social and professional connections.
  - d. An enhanced sense of personal security.
109. Kaia is better protected against the effects of exigencies such as death of a parent, job loss, disability, or even dissolution of the triad, than she would be in a two-parent family.
110. I see no direct connection between our family structure and Kaia's education in the academic sense, although we intend to seek for her a learning environment which is respectful of her family.
- a. We have no desire or intention to enrol Kaia in any religious school, nor in any school created to teach polyamory as a principle, nor in any school which seeks to enrol solely or primarily children of polyamorists or of multiple-adult families.
  - b. Our primary goals for Kaia's education are the promotion of critical thinking, independence, skills for self-education and self-improvement, and high academic and artistic achievement, tempered with respect for her individual talents and inclinations.

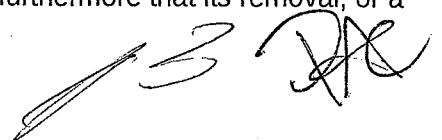
### **Section 293 CCC's impact on the family and its members**

111. I fear, and believe that the other members of our triad likewise fear, that Section 293 may adversely affect our ability and authority to care and provide for Kaia.
- a. I fear that, should the issue be brought to the attention of child welfare authorities, those authorities might find our triad to be in violation of Section 293, and/or might find Section 293 to lend credence to the idea that multi-partner conjugal relationships are immoral, unhealthy, or contrary to the standards of Canadian society.
  - b. I fear that, as a result of such a determination and should some occasion for evaluation arise, any or all of us might be deemed unfit parents or caretakers for Kaia, and/or our home might be deemed an unfit environment for her, resulting in some or all of us losing custody of Kaia, access to her, some or all control over her upbringing, and/or the right to live together as a family.
  - c. I fear that, should there be any challenge to our arrangements providing for my custody of Kaia in the event of the death or incapacity of both of the other members of our triad, Section 293 might weigh as a factor in denying me such custody.
112. I fear, and believe that the other members of our triad likewise fear, that any or all of us could be subject to prosecution, conviction, and punishment under Section 293.
- a. I believe that, if the concept of conjugality underlying Section 293(1)(a)(ii) is sufficiently coherent to include any relationship at all, then it must include our triad's relationship, and thus that if Section 293 is held to be valid, it will apply to our triad. It is thus my lay opinion



that, in the light of the factual evidence of this affidavit and of other readily available evidence, and absent any grant of immunity, conviction would be a near certainty in any prosecution against any of us should Section 293 be held to be valid law.

- b. I fear that, in the wake of any decision upholding the validity of Section 293, the Crown may seek to apply the statute more aggressively than in the past, and may choose to demonstrate lack of religious animus against patriarchal polygynists by bringing prosecutions against persons, such as the members of our triad, who practise secular egalitarian polyamory.
  - c. I fear that our participation as witnesses in the present proceeding will call us to the attention of Crown attorneys, and may furthermore engender political animus against us, and thus that our triad may stand at especially high risk of prosecution.
113. I fear, and believe that the other members of our triad likewise fear, that Section 293 may cause immigration authorities to deny me permanent residency or citizenship in Canada.
- a. It is my understanding that violation of, or evident intent to violate, any Canadian criminal law is grounds for and can be expected to result in exclusion from permanent residency or citizenship.
  - b. Should I be denied permanent residency or citizenship, I would be harmed by losing the chance to live in and fully contribute to the country I have chosen as most suitable to me.
  - c. Although all other members of our family are Canadian citizens, any decision denying me the right to reside in Canada would force them to choose between *de facto* exile from their native country and the loss of their freedom to live life with the mates of their choice in the fashion of their choice.
  - d. I believe that the other members of our family would in fact leave Canada if I were denied the right to reside here. The United States is our family's chief alternative to Canada as a country of residence. However, there is no guarantee that the United States would admit the other members of our family as immigrants or would do so quickly, and indeed no guarantee that we would find ourselves welcome as a family in any country at all. Inability to find a place of residence could temporarily or permanently separate our family, resulting in enormous negative consequences for all family members.
114. Our family suffers and/or fears a variety of harms from lack of positive legal or social recognition of our relationship. Among these, the most keenly felt by me is my lack of formal or universally recognized authority to make decisions regarding Kaia in the absence of her other parents. Other concerns include the possibility of exclusion from access to one another in medical emergencies, and the lack of numerous other privileges, advantages and preferences provided to families by both private and government actors. I believe that the presence of Section 293 in the Criminal Code contributes to this lack of recognition, and furthermore that its removal, or a

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clear declaration of its invalidity, is a prerequisite for greater positive recognition of our family and of other polyamorous families.

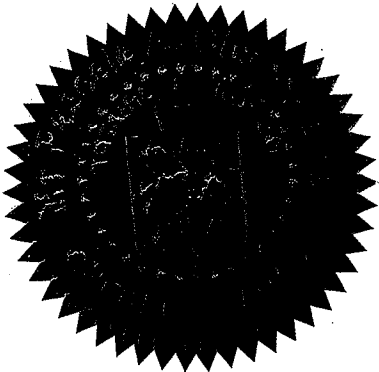
115. I believe that the present widespread presumption that Section 293 is valid law contributes to stigma and animus against those practising polyamory in Canada, and fear that any formal affirmation of Section 293 would tend to broaden and intensify this animus, possibly with negative effects on our family.

SWORN BEFORE ME at the City of  
Montréal, Québec, this 31<sup>st</sup> day  
of May, 2010.

*Pascale A. Chapdelaine*  
A Commissioner for taking  
Affidavits For Québec

*John Robert Bashinski*  
John Robert Bashinski

*Pascale A. Chapdelaine, notary.*



**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. 1986, C. C-46**

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**AFFIDAVIT**

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