



**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 KAREN ANN DETILLIEUX**

I, Karen Ann Detillieux, of Lorette, Manitoba, MAKE OATH AND SAY AS FOLLOWS:

**I. Identity and background**

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. I am 38 years old, having been born Karen Ann Rempel in Calgary, Alberta, on the 27<sup>th</sup> of April 1972. I am a Canadian citizen.
3. I hold a Bachelor of Science (Honours) and a Master of Science in Physiology.
4. I am employed part-time as a Research Associate in an academic research laboratory.
5. I make this affidavit in support of the Canadian Polyamory Advocacy Association's intervention in this Reference.

**II. Marriage and family**

6. I have been legally married to Gilles Réal Detillieux since May 6, 1995. Mr Detillieux is a Canadian citizen, having been born in Saskatoon, SK on March 25<sup>th</sup>, 1961. We are the biological parents of two school-age children.

7. I have had a second conjugal relationship with Blair David Mahaffy since June of 2007. Mr Mahaffy is also a Canadian citizen, having been born in Winnipeg, MB on April 20, 1962. Mr Mahaffy's two teenage children also reside with us.
8. Mr Mahaffy, Mr Detillieux and myself, together with our children, consider ourselves and behave as a family unit. For brevity, I will refer to the group of us (three adults, four children) as "our family".

### **III. Experiences related to polyamory**

9. Neither Mr Detillieux nor myself had any knowledge of the term "polyamory" until 2005, though we were aware of the practice of open marriage.
10. I have known Mr Mahaffy since 1991, having met Mr Detillieux and Mr Mahaffy through a common social connection. Mr Mahaffy and I have had a close friendship since we met, a friendship that was known to, appreciated and supported by Mr Detillieux. In 2005, I became acutely aware that the developing depth of my emotional connection to Mr Mahaffy posed a potential threat to my marriage to Mr Detillieux. I was troubled by my feelings and wished to remain faithful to Mr Detillieux.
11. Mr Mahaffy was familiar with the concept and practice of polyamory and we learned the term from him. From my experience I have learned that it is possible to remain faithful to one even in the face of having feelings for another. Mr Detillieux was able to understand and trust that my feelings for Mr Mahaffy did not in any way negate, trump, or interfere with my feelings for him.
12. Polyamory thus provided me with a context to make sense of my feelings for both Mr Mahaffy and Mr Detillieux, understanding that just as a parent can have deep and equal love for more than one child, so can an adult have deep and equal love for more than one partner. It was extremely liberating to all of us to understand that a cooperative arrangement was possible and that no relationship needed to end as the direct result of the existence of another relationship. In our experience, healthy relationships were spared and continue to grow and flourish.

### **IV. Polyamorous orientation**

13. Mr Detillieux and I have lived our marriage with intent, consciously working toward ever greater levels of trust, respect and understanding through open communication. As my feelings for Mr Mahaffy developed, Mr Detillieux was one of the first people in whom I

confided and from whom I sought reassurance and advice. Mr Detillieux, while in his own way seeking reassurance from me, has never demanded or suggested either explicitly or implicitly that I end my relationship with Mr Mahaffy in order to remain faithful to him. Over time it has become evident to us that marital faithfulness is not defined by exclusivity.

14. My Mahaffy has never, either explicitly or implicitly, suggested that I end my relationship with Mr Detillieux in order to be with him. Even as our own relationship developed beyond friendship, he always supported my marriage and extended his friendship to Mr Detillieux.
15. It is my experience that the development of an intimate relationship is, at the emotional level, beyond the simple matter of conscious choice. However, how one chooses to act on the development of an emotional bond is governed by conscious effort and intent. Mr Mahaffy never pressured me to act, and as an expression of my commitment to Mr Detillieux, I chose not to act on my feelings for Mr Mahaffy without first confiding in Mr Detillieux. My relationship with Mr Mahaffy has thus developed with Mr Detillieux's full and ongoing knowledge, consent and support.
16. As conjugal partners sharing a home, this level of cooperation, synergy and support persists. I will seek the advice and perspective of one partner in dealing with an issue with the other. My partners will confer with one another in their interactions with me. We make a habit of regular three-way conversations to discuss both household pragmatics as well as deeper more emotional issues.
17. Although in my experience polyamory now seems in my life to be the natural order of things, I do not believe that anyone is under any positive moral or ethical obligation to practice polyamory. However, because of my experience I know polyamory to be a viable option in maintaining healthy intimate relationships, an option that in a free-thinking society should be available to all consenting adults.
18. While jealousy is often used as an argument in favour of monogamy, it is my experience that jealousy is nothing more or less than one of a whole spectrum of human emotions to be understood and worked through like any other. Jealousy, like passion, is not exclusive to sexual relationships and occurs in many contexts. As such, it is not my experience that feelings of jealousy are appropriate grounds for moral judgment.

## **V. Elements of Conjuality**

### **A. Self-Image and Commitment**

19. For all intents and purposes, I consider myself to have two life partners. Because of our legal arrangement and social conditioning, Mr Detillieux and myself will refer to one another as “husband” and “wife”, though we have noticed over the course of our relationship that we do tend to avoid those terms if we can, likely because of the specific role definitions associated with them from our conservative Christian backgrounds. Mr Mahaffy and I will refer to each other as “partner” when we feel safe doing so, but because of prior negative experiences, we are cautious with how we present ourselves. For this reason, we will often use the term “housemate” or “friend” to refer to one another in more casual contexts.
20. Although we do not see our relationships as absolutely indissoluble, our understanding is a marriage-like commitment to staying together indefinitely and regardless of any personal, financial or medical changes, working through relationship issues in preference to dissolving any relationship, always keeping in sight the value of being together and using conscious intent in how we treat one another.
21. Because the children in our care come from different biological and legal parents, we consider ourselves to be a “blended family” and amongst ourselves and with others who know us well, we will on occasion use the prefix “step” to refer to parent, child and sibling relationships. We thus acknowledge the separateness of our origins even in the context of our present union.
22. The understandings under which we operate as a family are the product of careful consideration, dialogue and negotiation. While these understandings are subject to ongoing renegotiation in response to changes in circumstance, we agree that they are not to be changed by any of us unilaterally.

### **B. Child rearing**

23. In our family, biological parents are given the final authority in the affairs of their children, particularly in issues regarding educational or medical decisions. While having no legal authority, step-parents are given pragmatic authority under immediate circumstances and it is assumed that we will provide emotional support and physical care to our step-children wherever the need arises. As co-parents, we work together to establish codes of conduct and

expectations for our household and support one another in the enforcement of these expectations.

24. Our family self-image is nurtured through shared experiences and open communication between adults and children. Our children are aware that our arrangement is like a marriage in the sense of intimacy, commitment and stability. Their behaviour reflects both comfort and security, and they are willing to discuss our family relationships openly with the three of us, according to their individual levels of development.

#### **C. Extended family relationships**

25. The general nature of our family structure is known to many, but not all, of our near legal and biological relatives. Because of traditional and religious values held particularly by members of the Detillieux family, we have been reluctant to fully disclose the nature of our relationships to avoid the anguish and strain that would undoubtedly result from such disclosure.
26. Regardless of full disclosure, legal and biological relatives have been encouraged to view and treat all the members of our household as family. Understandably, there is a direct correlation between the depth of religious and traditional values held and the reluctance to embrace this perspective. Also understandably, those that are aware that Mr Mahaffy and I are in fact partners are more likely to view and treat us as a family unit. While the depth of relationship and frequency of contact varies greatly, none of the adults in our household have experienced any estrangement from members of our family to whom we have disclosed our truth.

#### **D. Community relationships**

27. Whether or not we have fully disclosed the nature of our relationships, our friends, acquaintances and the community at large, for the most part recognizes us as a single household rather than two families living under one roof.
28. The staff of the local schools is aware that there are three care-giving adults in our family and have contact information for all of us on file in case of emergency.
29. Our family frequently interacts as a social unit, attending and hosting events together, and is frequently invited to events as a unit. I have also had the opportunity to accompany Mr Mahaffy to social events as his significant other.

30. As a matter of personal principle, I am severely uncomfortable with the concealment of the conjugal nature of my relationships. While I do not wish to draw tabloid-like attention to myself or my family, nor do I desire to make my conjugal relationships the centre of my identity, I do desire a level of comfort and acceptance that would make our family structure simply another option in the spectrum of accepted norm. In particular, it is important to me that members of our social circle and the community at large do not worry about the state of my marriage to Mr Detillieux as a result of the observation of the closeness of my relationship to Mr Mahaffy.

**E. Cohabitation**

31. The land title of our home is issued to myself, Mr Detillieux and Mr Mahaffy as joint tenants. We thus own the house together and have equal shares in its value.
32. The house contains two functional master bedrooms. There are two other bedrooms that are shared by the children.
33. All family members share in the care and maintenance of the home according to their skills, abilities and availability.

**F. Sexuality and emotional attachments**

34. I have an ongoing romantic and sexual relationship with each of Mr Detillieux and Mr Mahaffy. Each of these relationships is based on emotional attachment, mutual respect, equality and conscious intent.
35. There is no sexual relationship between Mr Detillieux and Mr Mahaffy. However, their relationship is comfortable and familiar, and is based on mutual respect, appreciation, equality and conscious intent.

**G. Financial interdependence**

36. Mr Detillieux and Mr Mahaffy are both stably employed full-time in the IT profession, while I am employed part-time as mentioned in paragraph 4 of this affidavit.
37. The three adult members of our family together hold a mortgage, a bank account, and a credit card. Our financial resources, including take-home pay, investment income, and other assets are considered to be pooled, even if registered in the name of an individual. We make all financial decisions together, including retirement planning. Our last will and testaments, along with our life insurance policies, make allowances for the fact of our financial

interdependence with respect to the distribution of wealth and financial assets should one of us predecease the others.

#### **H. Ceremony**

38. Mr Detillieux and myself were legally married in a religious ceremony in 1995. There has been no rite or ceremony to mark the relationship between Mr Mahaffy and myself, although we wear matching rings to reflect our commitment. We often speak of a ceremony and have the desire to act on this idea.

#### **I. Other**

39. Our family vacations together and most of our recreational travel involves the entire family. In addition, travel and recreational time is planned for myself with each of my partners individually, to nurture and enjoy our relationships.

### **VI. Distinctions between polyamory and traditional (religious) polygamy in philosophy and practice**

#### **A. Religion and philosophy**

40. I was raised in the Christian faith and in my young adulthood became heavily involved in the evangelical movement. Mr Detillieux was raised by highly religious French Catholic parents and participated with me in the evangelical congregation to which we belonged after we were married. Mr Mahaffy's family was loosely affiliated with the United Church in his childhood, but did not regularly attend services or practice any formal religious activity.
41. About 8 years ago I left the evangelical church, having rejected nearly all points of their statement of faith. I have since adopted a spiritual philosophy that is based on many of the principles I learned from the Christian faith, such as compassion and forgiveness, without the rigid doctrines surrounding the exact nature of the divine or an afterlife. Because of a family history of addiction, much of my spiritual practice in the last decade has centered on the personal application, in contexts other than alcoholism, of the Twelve Steps of Alcoholics Anonymous, though this is not for me an exclusive source of spiritual guidance and wisdom. Indeed, when I observe the surfacing of a particular principle or perspective in more than one spiritual tradition, that principle for me gains a certain level of credibility compared to a principle that is unique to a particular source or teaching.
42. My partners and I frequently discuss spiritual matters. We read the writings of various teachers and philosophers, discuss what we read and support one another in our personal

spiritual practices. While we tend to observe the common Christian holidays and festivals such as Christmas and Easter, we do not consider ourselves affiliated with any formalized religion, even if we retain to varying degrees some of the basic principles with which we were raised.

43. In spite of my efforts to broaden my mind and let go of judgement, I remain acutely suspicious of religious doctrine, particularly when it appears to be followed blindly and without critical evaluation.

#### **B. Distribution of power and responsibility**

44. My partners and I view one another as equals in all sense of rights and responsibility. All decisions affecting the family as a unit (including financial decisions) are made among the three of us by consensus and not by a majority vote. The weight of each individual opinion may vary according to the degree of expertise or the degree to which a decision will affect a particular individual relative to the others.
45. In our individual and personal affairs, we seek support, advice and perspective from one another, and we respect each person's choices when a decision rests ultimately with just one of us.
46. Leadership will emerge based on aptitude or experience for any given issue or situation, but that leadership does not involve the exertion of power over another, and is recognized in the moment rather than appointed in advance.
47. The presence of a third party has proven to be very helpful in the case of a disagreement or emotional tension, offering perspective and reminding us of the intent behind the decision we are facing.

#### **C. Sexual conduct**

48. The sexual agreement I have with Mr Detillieux and Mr Mahaffy carries a certain degree of exclusivity. None of us is currently involved with anyone outside our family, and we do not consider our relationships "open" in the sense that we do not actively seek sexual involvement outside of the relationships we already have. This is by choice and by consensus, not because any one of us has imposed restrictions on anyone else.
49. Specifically because of our experience, all of us recognize that emotionally intimate relationships can and may develop between one of us and someone outside our family. If this were to happen, we agree that the same principles of polyamory that allowed and ensured the



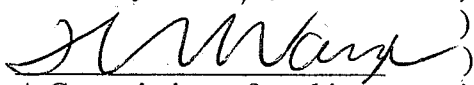
endurance of my marriage to Mr Detillieux would be applied to carry us through the changes a new relationship would bring. Knowing there are no guarantees, we are content to trust one another as we hold in sight the value of our relationships and seek to treat one another with kindness and respect.

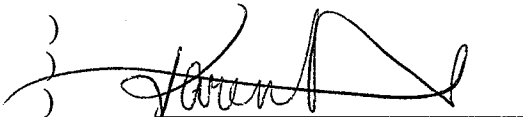
## **VII. The impact of Section 293 on our family and its members**

50. Throughout the development of our conjugal relationships and current family structure, my partners and I have faced social opposition from friends and family who claim to represent the “moral majority” or mainstream society. This opposition has ranged from mild scepticism to the severing of relationships.
51. This opposition has affected each of us on a very personal level. Being the target of negative judgment and attitudes has caused us to repeatedly question ourselves to make sure we are doing the right thing. While we believe self-examination to be a healthy practice, this kind of moral self-doubt causes unnecessary and harmful feelings of shame and guilt that undermine our efforts to act with confidence and ethical integrity to the best of our abilities in every way.
52. I am aware that as a result of the opposition I have faced, I am much less likely to trust those I meet and know to accept me as I am and to behave amicably toward me upon learning of my relationship model and family structure. As mentioned in paragraph 30 above, I abhor the need to hide the nature of my relationships but more often than not feel compelled to do so because of the fear of social opposition that can feel like persecution.
53. However, I am also aware that I have retained far more relationships with friends and family than I have lost after disclosure. This implies to me that in spite of my negative experiences and the fears they have generated, Canadians are generally open-minded, accepting people who are content to live and let live so long as no harm is being done to another.
54. While we have not and do not fear persecution under the law (specifically because of the Canadian Charter of Rights and Freedoms), the existence of Section 293 as it is written purports to criminalize my family and my conjugal relationships. From my perspective this law supports those few who have criticized and rejected my relationships and accused us of wrongdoing, or worse, of bringing harm to ourselves or our children. On the contrary, from our personal experience we know that the inability to freely express key parts of ourselves and our lives causes harmful and unnecessary stress.

55. As a result, we wish to testify to the fact that multiple conjugal relationships are a viable option in a free society, specifically when the power of decision making and freedom of sexual expression are evenly distributed among the individuals involved, regardless of gender or sexual orientation. Our conscious intent in building our family relationships has resulted in a stable, loving and supportive home environment.
56. We, my partners and I, recognize there is a certain level of risk that results from the submission of this affidavit. We have been asked why we would draw this attention to ourselves when we would likely otherwise be overlooked by legal authorities. The answer lies in our desire to assist the lawmakers of Canada in seeking to clarify the intent behind Section 293. Relationships based on equality, mutual respect, emotional bonds, personal affinity, trust and commitment do not belong in the criminal code. We thus take the risk of exposing ourselves to the public eye in an effort to demonstrate that the formation and maintenance of such relationships is not exclusive to monogamy. As opposed to our current state of feeling marginalized by the law and fearful of discrimination, we anticipate that the clarification, removal or replacement of Section 293 will bring us a profound sense of relief that comes with the hope of living confident and fully integrated lives as Canadian citizens.

SWORN BEFORE ME at  
 WINNIPEG, Manitoba  
 this 27<sup>th</sup> day of May, 2010.

  
 A Commissioner for taking  
 Affidavits For Manitoba

  
 Karen Ann Detillieux

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**AFFIDAVIT**

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