

**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 ZOE ANNE ELIZABETH DUFF**

I, Zoe Anne Elizabeth Duff of Victoria, British Columbia, 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 make this affidavit in support of the Canadian Polyamory Advocacy Association's intervention in this Reference.
3. I am 50 years old, having been born Zoe Anne Elizabeth Duff in Toronto, Ontario on the 5th of November 1959. I am a Canadian citizen.
4. Statements in the remainder of this affidavit regarding the understandings, beliefs, and mental states of my conjugal partners, and/or regarding the agreements between me and my conjugal

31 MAY 10 09:56:11  
12014 509-7767

RMSA

31.00

partners, are based upon a relationship of trust with each of them, and have been discussed with them in the preparation of this document.

5. I have been a resident of Victoria, British Columbia since April of 1999.

6. Before moving to Victoria, I was a resident of Ontario, Canada in various municipalities for all of my life with the exception of one year when my parents and I lived in Weyburn, Saskatchewan.

7. I hold a Diploma in Fashion Merchandising from International Correspondence School, a Diploma in Private Investigation from Thompson Education Direct, and have studied a Bachelor of Arts degree program in Behavioural Science at McMaster University, the University of Toronto, and the University of Victoria.

8. I have three sources of employment. I have been employed fulltime in a government clerical position since July of 2000, part-time as a security guard with a small security firm since June of 2009, and have operated a registered home business since January of 1995. I am a Director of the Canadian Polyamory Advocacy Association but am providing this affidavit of my own personal experience as a person practicing polyamory in Canada.

## **II. Cohabitation and family**

9. I have declared myself as being in a common-law relationship with Jayson Hawksworth since January of 2006. Mr. Hawksworth is a Canadian citizen, having been born in Port Alberni, British Columbia on the 20th of January 1956. I am the biological and legal parent of six children and young adults aged 15 to 26 years. Mr. Hawksworth is the biological and legal parent of two other young adults aged 21 and 23 years. We are a stable and happy blended family. Mr. Hawksworth is separated from his wife who is aware of our living arrangements and accepting of them.

10. I have had an intimate and conjugal relationship since March of 2009 with Danny Weeds who is also a Canadian citizen, having been born in Halifax, Nova Scotia on the 26th day of August 1966. Mr. Weeds is separated from his wife who is aware of our living arrangement and supportive of them.

11. Mr. Hawksworth, Mr. Weeds and I, together with my two youngest children aged 15 and 16 years, consider ourselves and behave as a family unit. I will hereafter refer to the group of three adults and two children who live together as "our family" although we consider the children who are young adults on their own and our other lovers who do not reside with us as being members of our family.

### **III. Previous relationships related to polyamory**

12. During the period 1980 to 2000 I was married and divorced twice and had other serious committed relationships. I experienced spousal abuse in both of my marriages. In 1999 I learned about polyamory and felt an instant resonance with the philosophy.

13. I lived with Mr. Hawksworth from 2001 to 2005 as roommates and a casual sexual relationship developed slowly into a common-law relationship. In 2006, I added him to my employee benefits package as my common-law partner and we filed our tax returns with Revenue Canada as common-law partners beginning that year.

14. We have always had an open relationship and have each dated others as well as dating couples together. We have explored and networked with other alternative lifestyle groups on Vancouver Island and in Vancouver. We are both individuals who think of the other first and make much effort to empower each other.

15. In August of 2008, Mr. Hawksworth and I began to date another couple quite seriously. In March of 2009 this couple separated for unrelated issues and the husband, Mr Weeds, moved into our home. His wife remains a close friend of all of ours. My sons have a common language

of computer and video gaming with Mr. Weeds and he has become another excellent male reference for them.

#### **IV. Polyamorous orientation**

16. Although I only discovered the term “polyamory” in 1999, I believe I have been practicing it in various forms for most of my dating life. I was raised in a Christian home and firmly believed that marriage was a life time commitment for a man and a woman. I was devastated that my first marriage did not work and divorce was a very tough decision to establish my right to live without abuse. Jealousy is very rarely something I experience. I am a perfectionist and most comfortable in a setting of multi-tasking. I have been for the most part a single mother of six children and one has to exceed at multi-tasking to survive. I believe firmly in empowering those I encounter to be happy in their lives and rise to the fullness of their dreams. I believe that love is not limited nor is it territorial and, that no matter what, I will have all that I need and I will not run out of love to share.

17. I can't imagine not being polyamorous for myself and understand that both of my conjugal partners have personalities and preferences suited to this type of relationship. I don't think that it is the kind of situation that many other people would have the natural inclination for nor the fortitude to work on. I do think, however, that many of the communication skills that are necessary to maintaining a successful polyamorous household would also enhance most monogamous relationships.

#### **V. Elements of Conjuality**

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

18. Mr. Hawksworth, Mr. Weeds and I consider ourselves to be a triad of equal partners in the managing of our home. We refer to each other as “partner” except in situations where the relationship has not yet been disclosed and then we will use the term “girlfriend” or “roommate”.

19. Our triad is new but we see it as a long term commitment and make reference to growing old together and purchasing a home together. We work continually to resolve issues as they come up and adapt to changes that arise. We agree that we have an obligation to consider the feelings, concerns and well-being of each other and all family members in our decisions and actions.

20. Our triad functions much like a married couple. We do everything together and when attending events where one of us has had to work, the other two talk about the missing one and feel a loss at his/her absence. We are known as a triad amongst our polyamorous community, in our neighbourhood and to some degree in our work environments. For the most part after an initial surprise, people are often relieved and supportive as seeing me with the other partner makes people uncomfortable as they assume a scenario of cheating. Once the consent of all has been verified, their acceptance is generally forthcoming.

## **B. Cohabitation**

21. All of the other members of our family (three adults and two children) reside in the same house.

22. Each of the children has his own room. The members of our triad share one very large bed in one bedroom. We have an office / dressing room that we share and Mr. Weeds has his own room for his sport and gym equipment. We share all common areas and enjoy family times with the children as well as shared private times.

23. General common area domestic duties are divided amongst all family members as schedules permit. The personal space cleaning and laundry are each individual family member's responsibility.

24. We have a posted calendar in the kitchen and an online calendar where we keep track of everyone's work and school schedule, and events. Dates with outside partners are posted to the online schedule for the adults to note.

### **C. Child rearing**

25. The children within the home and the young adult children living elsewhere are parented by their biological parent with the advice and support of the others.

26. Mr. Hawksworth is a gentle man and while it took him some time to heal me of my fear of abuse, he has been absolutely the best thing to ever happen to me. My daughters love him dearly and call him "Dad" which is an amazing feat given their experience with my second husband. His daughters call me "Mom". My sons are very fond of him as well and struggle to adopt his more gentle ways while the memory of my second husband's violence is still clear.

27. My partners have similar personalities and interests and are very good friends, supportive father figures to my children and excellent examples of healthy male bonding for my sons. We have much discussion about child rearing and relationship building skills with both teens and adults. I am no longer alone raising my children but supported by a committee of wise and loving men.

28. The biological fathers have little to no contact with my children and no visitation rights established in any court order.

### **D. Extended family relationships**

29. My older children and step-children live elsewhere but visit regularly. My parents live in Victoria and are aware of our polyamorous lifestyle and are supportive of the happiness they see in my life. My brother lives in Ontario and is pleased that I am being loved and treated properly. Extended family and friends are aware of my lifestyle as it comes up in conversation. I have written a novel in which several of the characters practice polyamory. It has been well received and an inspiration for open discussion with family and friends.

30. Our family interacts as a social unit, attending and hosting events together and is invited to events as a unit within our social circle and in my extended family. Mr. Hawksworth and Mr.

Weed's families are not local and those interactions have not been possible but both immediate families are aware of our living situation and supportive.

### **E. Community relationships**

31. In November of 2001, I was dating several men and couples locally and long distance. I was reading and learning about polyamory and trying to practice it. The closest group of like-minded people was in Vancouver and I was unable to attend their scheduled monthly meetings. I formed the Vancouver Island Polyamory Discussion and Social Group (Van Isle-poly) in mimicry of the established Vancouver Polyamory group and have facilitated meetings, workshops, camping trips, resort weekends and various other events for the group ever since. Mr. Hawksworth was one of five founding members of this group. We have 150 members who live predominantly on Vancouver Island with local meetings in Victoria and Nanaimo. Mr. Weeds and his wife have been members of the group for several years. I travel to network with other groups in Vancouver, Seattle and Portland regularly and maintain ongoing online contact with groups and especially other facilitators worldwide.

32. The vast majority of our family's travel and social time revolves around the polyamory community. Where we have cause to socialize otherwise we prefer to attend together but understand that this is not always comfortable and I will attend events, usually work related, with one or the other of my partners as his guest.

### **F. Sexuality and emotional attachments**

33. Sexuality within our triad is heterosexual as both men have that orientation. Romantic and sexual expressions are spontaneous and even though date nights are scheduled sexual activity is not assumed or an obligation of any member of the triad.

34. We have the following agreements with respect to sexual and romantic activity with persons outside our triad:

a. Each member of our triad is free to engage in sexual and romantic relationships with people outside the triad. These relationships may involve one, two, or all three triad members. We generally inform each other of outside dating and seek approval of the others as a consideration.

b. The well-being of our family and its members is of primary concern, and takes precedence over outside relationships.

c. We have a safe sex agreement in place for avoiding pregnancy and sexually transmitted diseases.

35. Each member of our triad in fact has or has had romantic and/or sexual relationships with others during our conjugal relationship.

36. We recognize the possibility of adding further adults to our family, on an equal footing but do not currently have the space or inclination.

#### **G. Financial**

37. Mr. Hawksworth is employed full time with a large grocery chain. Mr. Weeds is recently employed full time with a large security firm and also part-time with a smaller security firm.

38. The domestic expenses are shared according to ability by each of the three adults and one of us is designated to pay each of the bills. The expenses of the two children in the home are mine with the occasional receipt of child support payments by their biological father.

39. Each member of our triad maintains a separate bank account and other investments, including RRSPs and Canada Savings bonds.

40. Our triad rents our family's residence and the lease is in my name. The household bills are also in my name. This is due to my former experience as an abuse victim and a very strong need to maintain financial independence.



41. Mr. Hawksworth owns two vehicles. The vehicles are informally treated as a common resource.

42. I have a life insurance policy through one of my employers with my children as beneficiaries. Additionally I have insurance policies on my life and Mr. Hawksworth's life and we are each other's beneficiary. My group life and health covers Mr. Hawksworth and my youngest two children. Mr. Hawksworth has recently qualified for benefits through his employer and Mr. Weeds will have benefits through his employer in a few months. We have discussed options to provide financial support for each other in the event of our deaths.

43. We have discussed relocating and career changes and have long term plans developing. Having previously been on public assistance in my second marriage and as a single mother, I am proud to have been able to support my children in British Columbia with my own employment income and have no plans to ever be supported by public assistance again. Mr. Hawksworth and Mr. Weeds are not in receipt of public assistance and do not plan to be. We supported Mr. Weeds between jobs and while he volunteered for the 2010 Olympics and are in agreement that we will weather financial storms together.

## **H. Ceremony**

44. 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.

45. Mr. Hawksworth and I regularly celebrate the anniversary of our common-law relationship with friends and family with a party. We privately celebrated the first anniversary of our triad and plan to have a more public celebration next year.

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

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

46. I was raised in the Reorganized Church of Jesus Christ of Latter Day Saints now known as The Community of Christ Church. This church shares much of the history and some doctrine of the church referred to as the Mormon Church. It is one of the splinter groups that did not follow Brigham Young to Utah. Polygamy is not accepted as being a part of the doctrine or practice of this church. The dominant reason for changing the name of the church in 2001 was to disassociate from the Church of Latter Day Saints (Utah Mormon church) because of an inability to use the church name in some countries where the Utah Mormon church is extremely unpopular. This church has always been confused with the larger Utah denomination.

47. I grew up being asked where my "other mother" was and harassed about my family's Mormonism even though our faith did not espouse polygamy or the supremacy of the male in the household. The Community of Christ Church began to ordain women in the late 1970's which is not true of any other Latter Day Saint faction. Church teachings emphasize that "all are called" as "persons of worth" to "share the peace of Christ".

48. After I moved to British Columbia, I maintained my membership with this church and attended with my children. I also needed a faith that was completely matriarchal and sought out resources to study and grow. I have been a practicing pagan since 2002.

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

49. In general, my partners and I view one another as equals in all sense of rights and responsibility. In practice, we still have decisions that involve extended family which are historically dealt with individually and will continue to be thus for some time. Decisions affecting the family unit are discussed and decided by consensus of the adults with the weight of the final decision being on the person most affected or having been designated to act upon the decision. Input from the children in the home is invited and decisions will often include negotiations with them.

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

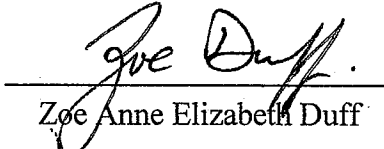
50. The fact that Section 293 stands, regardless of anticipated enforcement or lack thereof, places us in a moral dilemma as parents who have raised children to be law abiding citizens. We live a life that is honest and open and yet must be careful as to whom we disclose our loving and supportive relationship. Our children have experienced difficult conversations with friends and parents of friends who become aware of our triad and react with inappropriate comments since the existence of the law has been raised in the media. We have a family of wonderful children who love and respect us as parents and know that our relationship is supportive and loving but have trouble explaining why our breaking that law is fine but such things as underage drinking and recreational drug use have never been tolerated in or around our home.

51. Having been an active advocate for support and information in the polyamorous community both in Canada and the United States, my family is concerned that this puts me at risk for prosecution under this law. It causes me to consider carefully and hesitate greatly to participate and hampers my career choices as the publicity of my lifestyle increases.

52. We are unable to entertain any thoughts of ceremonially recognizing our relationship. I have been informed by my Wiccan Priest who is able to perform legally binding weddings through a parent organization that he must decline performing non-legally binding polyamorous handfastings. The parent organization has recently advised that it could be charged and have all credentials revoked for performing a symbolic ceremony under this section of the criminal code.

53. The lack of clarity in the wording of section 293 leaves us very vulnerable to enforcement of a law that can clearly be interpreted to include our family and community members.

SWORN BEFORE ME at the City )  
of Victoria, British Columbia )  
this 31 day of May, 2010. )  
J Burgoyne )  
Jaclyn D. Burgoyne. )  
A Commissioner for taking )  
Affidavits For the Province )  
of British Columbia )

  
Zoe Anne Elizabeth Duff

**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**

---

John Ince  
Canadian Polyamory Advocacy Association  
1204A - 2050 Nelson St.  
Vancouver, BC  
V6G 1N6  
604-688-4810  
johnince@telus.net