
STATEMENT

For Immediate Release
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October 22, 2009

Ministry of Attorney General

PROVINCE TO SEEK SUPREME COURT OPINION ON POLYGAMY

VICTORIA – Attorney General Michael de Jong released the following statement today regarding polygamy:

“I have today asked legal counsel for the Ministry of Attorney General to request the B.C. Supreme Court’s direction on two reference questions on polygamy (Sec. 293, Criminal Code of Canada).

“After discussion with legal counsel, I have come to the conclusion that to appeal the court’s ruling quashing the decision to proceed with the recent criminal prosecution would be inadvisable while questions persist concerning the constitutionality of Section 293 of the Criminal Code of Canada.

“Until Canadians and the justice system have clarity about the constitutionality of our polygamy laws, all provinces, including ours, face a lengthy and costly legal process in prosecuting alleged offences. With that in mind, I have instructed counsel not to appeal the Sept. 23 B.C. Supreme Court decision and, instead, to proceed with the reference questions I will be submitting to the court.

“I am proposing to pose two questions. The first will ask the court to determine if Section 293 is consistent with the Charter of Rights and Freedoms. The second will seek clarity on the Criminal Code provisions of Section 293. I am confident, given the importance of this matter, the court will agree to hear the questions.

“Pursuing a reference through B.C. Supreme Court gives us the option to introduce evidence and witnesses, which will put a human face on polygamy in contrast to the more abstract nature of a reference to B.C. Court of Appeal. Proceeding by way of reference is consistent with the earlier advice of senior lawyers Richard Peck and Leonard Doust. I would also like to thank special prosecutor Terry Robertson for shouldering the great burden of advancing the case against polygamy in our province.

“British Columbians and Canadians deserve and want to know whether valid laws are in place that prohibit polygamous relationships, particularly when those relationships involve minors. I am asking the court for its direction so the justice system, in B.C. and in Canada, can address the serious social harms that can result from the practice of polygamy.”

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A backgrounder follows.

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BACKGROUND

October 22, 2009

Ministry of Attorney General

HISTORY OF LEGAL PROCEEDINGS ON POLYGAMY IN B.C.

1990-1992

- Allegations of polygamy in the Fundamentalist Latter Day Saints community of Bountiful are forwarded to RCMP and Attorney General's office. RCMP investigates and provides a report to Ministry of Attorney General criminal justice branch. The branch concludes Sec. 293 is in conflict with Charter of Rights and Freedoms Sec. 2(a), guarantee of freedom of religion. Charges are not approved, as it is decided there is no substantial likelihood of conviction.

2001

- Former Chief Justice Allan MacEachern advises the ministry Sec. 293 is likely in conflict with Sec. 2(a) of the Charter and would be struck down if a prosecution was undertaken.

2002

- Former Attorney General Geoff Plant writes to his federal counterpart asking for a review of whether Sec. 293 should be replaced with "legislation that will better respond to the inappropriate use of a power imbalance within a community designed to encourage young women to enter into sexual relationships through a form of marriage." Former federal Justice Minister Martin Cauchon replies, "repealing the prohibition of polygamy in the Criminal Code may violate the equality rights of women in Canada, and would affect Canada's international commitments." Cauchon pledges his department's support in upholding Sec. 293 against a constitutional challenge.

2006

- RCMP forward a report to the criminal justice branch on recent investigations into alleged criminal misconduct in Bountiful. The report recommends charges of polygamy and sexual exploitation. Charges are not approved, as senior Crown counsel agrees there is no substantial likelihood of conviction.

2007

- Former Attorney General Wally Oppal issues a directive to the criminal justice branch May 31, resulting in the June 6 appointment of Richard Peck, QC, as special prosecutor. Peck's July 25 report concludes while Sec. 293 is constitutionally valid, the issue of constitutionality would be most efficiently resolved through a reference question to B.C. Court of Appeal. Peck finds there is no substantial likelihood of conviction on all non-polygamy offences, including charges of sexual exploitation. On Sept. 6, Oppal directs the branch to appoint Leonard Doust, QC, to review Peck's analysis and conclusion that a reference was preferable to a prosecution on the polygamy charges themselves.

2008

- Doust's March 20 report also recommends a reference question to B.C. Court of Appeal. Oppal directs the branch to appoint special prosecutor Terry Robertson, QC, to conduct a charge assessment review of the most recent police investigation into Bountiful. Oppal argues Sec. 293 is a valid law that should be enforced. Robertson is appointed June 2.

2009

- Robertson charges Bountiful community leaders Winston Blackmore and James Oler Jan. 7 with one count each of polygamy. Robertson's decision to proceed with a criminal prosecution is quashed Sept. 23 when B.C. Supreme Court rules Peck's decision not to proceed with a prosecution was final and binding on Attorney General Oppal. Consequently, the Supreme Court justice quashed the appointment of Robertson as a special prosecutor and quashed his decision to approve charges in this matter.
- Attorney General Michael de Jong announces Oct. 22 the ministry will not appeal the Sept. 23 ruling, but will ask B.C. Supreme Court to respond to two reference questions on Sec. 293's constitutionality.

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