

IN THE COURT OF APPEAL FOR SASKATCHEWAN

IN THE MATTER OF MARRIAGE COMMISSIONERS APPOINTED  
UNDER *THE MARRIAGE ACT, 1995*, S.S. 1995, c. M-4.1

AND IN THE MATTER OF A REFERENCE BY  
THE LIEUTENANT GOVERNOR IN COUNCIL TO THE COURT OF APPEAL  
UNDER *THE CONSTITUTIONAL QUESTIONS ACT, R.S.S. 1978, c. C-29*

AFFIDAVIT OF SUNEIL SARAI

I, SUNEIL SARAI, of the City of Regina, in the Province of Saskatchewan, make oath and say that:

1. I am the Support Variation Project Officer, and legal counsel at the Family Law Information Centre of the Family Justice Services Branch of the Saskatchewan Ministry of Justice and Attorney General, and I have personal knowledge of the facts and matters herein deposed to, except where stated to be based on information and belief and whereso stated, I verily believe the same to be true.
2. Lionel McNabb, Director of the Marriage Unit, Family Justice Services Branch of the Saskatchewan Ministry of Justice and Attorney General, has advised me, and it is my information and belief, that Reynold Robertson, Q.C., and Michael T. Megaw, the counsel appointed by this Honourable Court to argue the issues raised by this Reference, have requested that the Ministry of Justice and Attorney General provide a summary of the

positions of the other provinces and territories with respect to the duties of Marriage Commissioners (or their equivalent) and the issue of same-sex marriage.

3. During the months of November and December, 2009, and January, 2010, I contacted officials in the other provinces and the territories to inquire about their policies regarding Marriage Commissioners (or the equivalent) and the issue of same-sex marriage. I summarise the information given to me by the officials of the other provinces and territories in the following paragraphs of this Affidavit.
4. It is my information and belief that the information provided to me by the officials in the other provinces and territories is true and up-to-date as of the date of this Affidavit.
5. For the province of British Columbia, Jack Shewchuk, Chief Executive Officer of Vital Statistics for British Columbia has advised me that the terms and conditions of appointment of a Marriage Commissioner include the following provision, expressly disallowing the Marriage Commissioner from declining to provide services to a same-sex couple:

The services of a Marriage Commissioner must not be limited or restricted on the basis of race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex or sexual orientation as prohibited by the Human Rights Code of British Columbia.

6. For the province of Alberta, Linda Sorensen, Program Administrator of Vital Statistics has advised me that while there is no official policy outlining the position of the Alberta Government, marriage commissioners have unofficially been given the discretion to decline to perform marriage for

any reason, but that individuals seeking a marriage commissioner to perform a same-sex marriage are often referred to marriage commissioners known within the department to be willing to perform such a marriage.

7. For the province of Manitoba, Susan Boulter, Director and Chief Operating Officer of the Vital Statistics Agency, has advised me that the Government of Manitoba does not permit anyone, except clergy, any discretion in the performing of marriages and that they view a refusal to provide government service as discrimination.
8. For the province of Ontario, Alexandra Schmidt, Senior Policy Analyst for the Policy & Regulatory Services Branch of ServiceOntario, on behalf of Deputy Registrar General for Ontario, has advised me that while there is no class of persons known as "marriage commissioners", marriages may be solemnized by religious officials, judges, justices of the peace and municipal clerks and that any person authorized to perform a marriage in Ontario is under no obligation to perform any marriage and can refuse to do so without disclosing their reason.
9. For the province of Quebec, Gaétan Rancourt of the Communications Branch of the Ministère de la Justice du Québec has advised me that the clerks of the Superior Court, appointed to solemnize marriages and civil unions, are hired employees of the Ministère de la Justice, which has taken the position that that no clerk is required to solemnize a same-sex marriage or civil union if it goes against their personal values. However the Ministère de la Justice has made a commitment to ensure that the requests for solemnization of same-sex marriages are fulfilled.
10. For the province of New Brunswick, Shelley Hayward, the Manager of Marriage Services, in the Vital Statistics Branch, has advised me that civil

marriage ceremonies are performed by Clerks and Deputy Clerks of the Court of Queen's Bench, who are required to be lawyers, and are appointed by the Minister of Justice. Appointed clerks are required to perform ceremonies for couples regardless of their personal or religious beliefs.

11. For the province of Prince Edward Island, the *Marriage Act*, R.S.P.E.I. 1988, c. M-3, as amended by S.P.E.I. 2005, c. 12, s. 7, contains the following section:

**11.1** For greater certainty, a person who is authorized to solemnize a marriage under this Act may refuse to solemnize a marriage that is not in accordance with that person's religious beliefs.

12. For the province of Nova Scotia, David Aikens, Director of Court Services, Department of Justice, has advised me that:

In September of 2004 a memo was sent out to all staff and administrative JPs advising them that, "Justices of the Peace who perform civil wedding ceremonies agree to perform any legal ceremony requested, and cannot refuse to perform a wedding on the basis of the gender of the parties."

Furthermore, during the training for each new JP we point out the same requirement and advise that JPs cannot refuse to conduct a wedding on the basis of the gender of the parties.

13. For the province of Newfoundland and Labrador, Christine Martin, Deputy Registrar of Vital Statistics, has advised me that in December of 2004, the Registrar of the Vital Statistics Division of the Newfoundland and Labrador

Department of Government Services sent out a memorandum to all marriage commissioners and marriage licence issuers which stated:

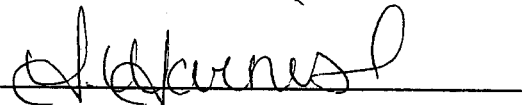
The denial of a same sex couple's right to the issuance of a marriage licence (once the usual criteria have been satisfied), denial of a same sex couple's right to marry, or a refusal of a marriage commissioner to solemnize (or make themselves available, without due cause, to solemnize) a marriage between same sex parties would be contrary to the law of the Province.

We are aware that some service providers may decide not to provide services to same sex couples. However, we must ensure equality in services under the law. If, after due consideration, you feel that you are unable to provide services to same sex couples, please indicate your decision to us by providing us with your resignation. If it is necessary for you to resign, we wish to express our sincere gratitude for the services you have provided in the past. If you have questions, or if you choose to resign, please advise us by telephone or fax. Your resignation will become effective January 31, 2005.

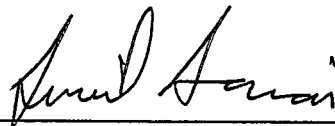
14. For the Yukon Territory, Sylvia Kitching, Deputy Registrar of Vital Statistics, has advised me that the Yukon Government has not instituted any official policy concerning discretion to refuse to perform marriage ceremonies, but that several marriage commissioners have previously declined to perform same-sex marriages.
15. For the Northwest Territories, Margaret Miller of Vital Statistics has advised me that the Northwest Territories Government has not instituted any official policy concerning discretion to refuse to perform marriage ceremonies.

16. For Nunavut, Margaret Nokkitok of the Vital Statistics Division has advised me that the Nunavut Government gives discretion to marriage commissioners to refuse to perform marriage ceremonies for any reason.
17. I have prepared and sworn this Affidavit to respond to the request for information from Mr. Robertson and Mr. Megaw and for the assistance of the Court of Appeal in determining the issues raised by this Reference, and for no improper purpose.

SWORN BEFORE ME )  
At the City of Regina, )  
Province of Saskatchewan, )  
This 28 day of January, 2010. )

  
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Being a Solicitor )

Or, My Commission Expires:  
31-dec-2013

  
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Suneil SARAI