

AFFIDAVIT OF MAURICE ARNOLD TOMLINSON
IN SUPPORT OF FIXED DATE CLAIM FORM

Filed on behalf of: The Claimant		
Deponent:	M.A. Tomlinson	
Affidavit No:	1 st	
Exhibit:	MAT 1 to MAT 18	
Sworn to:	November	2015
Filed on:		2015

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE CIVIL DIVISION

CLAIM NO.

IN THE MATTER OF THE CONSTITUTION OF JAMAICA

AND

IN THE MATTER of an Application by **MAURICE ARNOLD TOMLINSON**, alleging a breach of his rights under sections 13(3)(a), 13(3)c), 13(3)(g), 13(3)(i)(i), 13(3)(j)(ii), 13(3)(o), 13(3)(p), 13(3)(6) and 14 of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011

AND

IN THE MATTER of an Application by **MAURICE ARNOLD TOMLINSON** for constitutional redress pursuant to section 19(1) of said Charter

AND

IN THE MATTER of an Application made pursuant to Rule 56.9 of the Civil Procedure Rules, 2002 (CPR)

BETWEEN:

MAURICE ARNOLD TOMLINSON

CLAIMANT

AND

THE ATTORNEY GENERAL OF JAMAICA

DEFENDANT

I, **MAURICE ARNOLD TOMLINSON**, being duly sworn, make oath and say as follows:

1. I am a Jamaican national and have residences at 19 Angella Close, West Green, Montego Bay in the parish of Saint James and at 22 Philpott Gardens, Toronto, Ontario, Canada. I am the Claimant in this matter.
2. I am an attorney-at-law and a gay man.
3. I am married to a man under the laws of Canada and I regularly travel between my homes in Jamaica and Canada.
4. For the past 20 years, I have worked to eliminate stigma and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons in general and men who have sex with men (MSM) in particular. I pursue this work because of my commitment to universal respect for human rights that reflect the essential dignity of the person, and so that the very vulnerable group of individuals known as MSM can receive unimpeded access to critical

HIV and AIDS interventions in order to reduce the overwhelmingly high HIV and AIDS burden among this group.

5. From 1993 to 2006, I was a volunteer with Jamaica AIDS Support for Life (“JASL”), which is one of Jamaica’s major HIV and AIDS organizations. From 2006 to 2010, I was JASL’s Corporate Secretary and Legal Advisor. In this latter capacity, I advised and provided legal analysis on the Jamaican laws which criminalize any form of male same-gender intimacy (i.e. the prohibition on “buggery” and acts of so-called “indecent” between men). In my research, I found that, among many other harms, these laws result in gay people in Jamaica being driven underground, away from effective HIV and AIDS prevention, treatment, care and support interventions.
6. From January to December 2010, I also served as Corporate Secretary and Legal Advisor for the Jamaica Forum for Lesbians, All-Sexuals and Gays (“J-FLAG”), which is Jamaica’s major LGBTI organization.
7. From August 2009 to August 2012, I was a lecturer in law at the University of Technology, Jamaica where I taught a variety of law courses, including human rights and discrimination law.
8. In 2010, I was appointed Legal Advisor, Marginalized Groups for the international non-governmental organization (NGO) AIDS-Free World. In this capacity, I worked with J-FLAG and other Jamaican LGBTI and HIV groups to document abuses and other acts of violence against LGBT Jamaicans, including MSM in particular, in an attempt to advocate for changes to anti-gay laws and policies across the region.
9. Since January 2015, I have been employed as a Senior Policy Analyst with the Canadian HIV/AIDS Legal Network (“Legal Network”). In this capacity, I continue working with various Caribbean LGBTI groups to document abuses and other acts of violence against

Caribbean MSM and other LGBTI people and to advocate for the human rights of LGBTI people in countries of the region.

10. As a result of my advocacy for the human rights of LGBTI people, including in Jamaica, I have been subjected to numerous death threats as described below.

Personal knowledge and experience of my sexual orientation

11. From as far back as I can remember I have been sexually attracted to males. I and many others have been told, including by members of the public and some religious leaders, that homosexuality is a function of some childhood abuse or absent parents. However, my two brothers and I were raised in a loving Christian home with two heterosexual parents and I was never sexually molested or suffered any unusual childhood trauma – other than the substantial psychological harm of constantly being subjected, from various quarters, to the message that my sexual attraction to males was wrong, sinful and criminal.
12. Growing up in a fundamentalist evangelical church, I was repeatedly told by my parents and church leaders that being homosexual was wrong. I therefore resisted acknowledging my sexual attraction to men and even though I had relationships with men, they did not last long because I was always consumed with guilt about my sexual orientation and pushed my partners away.
13. After one such relationship with another man ended, I reconnected with my best female friend from university. We had known each other for nearly ten years and she knew about my sexual orientation. However, we both believed our church's teaching that homosexuality could be "cured" by regular heterosexual intercourse and prayer. We married in 1999 and regrettably, I found that I was only able to be physically intimate with my wife by thinking about men. I also engaged in furtive same-sex encounters while I was married, as the only way to experience full sexual satisfaction. I ended the marriage after four years when I

realized that I could no longer keep cheating on my best friend and using her as a “mask” and “cure” for my homosexuality.

14. I met my husband, Thomas Decker, in 2009 at an International Lesbian and Gay Association (ILGA) conference in São Paulo, Brazil. We were married on August 28, 2011 in Toronto, Canada.

15. I am now able to fully experience my sexuality in a committed, loving, nurturing relationship that harms no one.

Fear of prosecution

16. As a lawyer, I have been asked to assist numerous gay Jamaicans who were found by police engaging in intimate relations with other men in private. My clients were usually taken to the police station or the nearest automated teller machine (ATM) and “offered” the option of paying the police officers a bribe or having their personal information released to the local media.

17. I have also read reports in the media about adult men, engaged in private and consensual sexual activities, who have been prosecuted and convicted. A copy of one such report is attached hereto and marked as Exhibit “MAT1”.

18. I have a real and tangible fear, based on such cases, of being prosecuted and convicted for engaging in any form of intimacy with my partner in Jamaica. This fear is heightened since as an activist for the human rights of LGBTI people, I am frequently in the public eye.

19. In my view, the laws of Jamaica that criminalize consensual sexual intimacy between men essentially render me an un-apprehended criminal.

Threats against my life

20. It is my experience that the pervasive homophobia in Jamaica has created a culture of fear and rejection that has driven many gay people to repress their sexual identity. Gay men are forced to be very secretive about our identity. My own experience illustrates the risks associated with being identified as a gay man.
21. I regularly write letters to the Jamaican newspapers denouncing attacks on members of the LGBTI community in Jamaica. I also give radio and television interviews on this subject. Comments are posted on the newspapers' websites in response to my published letters and I also provide an email address where I receive correspondence in response to these published letters. Most of the radio and television programmes on which I appear also have a call-in segment. I regularly receive ill-informed, often vitriolic and hateful, responses that repeat common inaccuracies, fanciful claims and religious denunciations. These include declarations that all violence against gay Jamaicans is self-inflicted, assertions that legalizing same-sex intimacy will have apocalyptic results for Jamaica on the magnitude of the Haitian earthquake, and condemnations that gays are "perverts" and an "abomination" — which echoes the language of s. 76 of the Offences Against the Person Act criminalizing the "abominable crime" of buggery — and should either leave Jamaica voluntarily or be forcibly removed from the country.
22. In some instances, the responses threaten violence. In February 2011, I wrote a letter to a local newspaper describing police raids on two gay clubs in Jamaica. In response to the letter, I received a death threat via e-mail. The writer threatened that if I did not stop writing such opinions, I would "fucking die!" In a setting where such threats occur against a backdrop of regular violence against LGBTI people, including extreme and vicious assaults and murders, such a threat was not to be taken lightly, particularly given my visibility as a gay man and a human rights activist. When I reported the threat to the police, the recording

officer proceeded to hurl homophobic slurs at me. This was reported to Assistant Police Commissioner Les Green, who said that those anti-gay attitudes would not change until the anti-buggery law changes. A copy of this communication is attached hereto and marked as Exhibit “MAT 2.”

23. I subsequently reported the matter to the Inter-American Commission on Human Rights (IACHR) and on March 21, 2011, the IACHR ordered “precautionary measures” for me in light of the risk of human rights abuses. A copy of the IACHR’s notification of precautionary measures is attached hereto and marked as Exhibit “MAT 3.”

24. In issuing its order requesting the state of Jamaica to take precautionary measures, the IACHR found that I faced a situation of risk because of my work as a defender of the human rights of LGBT persons in Jamaica. It indicates that state authorities have not adopted protection measures despite the death threats I have received and drawn to their attention. The IACHR asked the State of Jamaica to adopt, in agreement with me, the necessary measures to guarantee my life and physical integrity, and to inform the IACHR on the steps taken to investigate the facts that led to the adoption of these precautionary measures. I requested that the police investigate the source of the death threat and advise me. The police told me that it would take them a week to identify the sender of the email but despite repeated requests they have failed to do so, more than 4 years later.

25. In January 2012, the *Jamaica Observer* carried an unauthorized photo of my wedding in Canada to my husband. Within 24 hours, more than 20 death threats were posted on the newspaper’s website as comments to the story. Despite my repeated requests that the newspaper remove the picture, they have failed to do so. A copy of the news report is attached hereto and marked as Exhibit “MAT 4.”

26. In March 2012, I received another email death threat, which I again reported to the police. I was again told that it would take the police a week to trace the email’s sender but, once again, despite repeated requests and despite the IACHR’s existing order for precautionary

measures, the police have failed to provide me with any information on the source of the death threat, more than 3 years later.

Public visibility of my work

27. In April 2010, I organized Jamaica's first "Walk for Tolerance" to draw attention to the need for tolerance of minority groups vulnerable to HIV and AIDS. Four gay participants in the Walk, who were identified on national television, had to flee their homes – one after his brother held him at gun-point and told him that if he did not leave he would be shot; the other three men fled after their homes were stoned. There was extensive media coverage of this Walk in Jamaica and internationally. A YouTube video was also made of the event in which I feature prominently, making me publicly identifiable as an activist for the human rights of LGBTI people.

28. I subsequently organized more than a dozen other public events in Jamaica to call attention to the need for human rights of LGBTI people as vital to improving Jamaica's HIV and AIDS response. However, for safety and security reasons, these "stands," as they were called, had to be conducted with extreme secrecy and without prior notice to the media or general public. Some participants also used disguises and the events were kept to less than half an hour.

29. In addition I have scripted and appeared in advertisements calling for respect of the human rights of homosexuals. One such "tolerance advertisement" was refused by local television broadcasters in Jamaica and a reason provided for the refusal was that the advertisement could be seen as condoning an illegal activity, since sexual activity between men is criminalized. A copy of a letter from the Corporate Secretary of one of the TV stations, TVJ, explaining their refusal to air the advertisement is attached hereto and marked as Exhibit "MAT 5".

Homophobia and HIV

30. It is my belief that the stigmatization of homosexuality arising from criminalizing consensual sex between adult men creates barriers to access to HIV interventions. As a gay man I am often unwilling to disclose my sexual identity to health care professionals in Jamaica. My situation is far from unique, and indeed, as a gay man who has eventually “come out” publicly and been very active for the rights of LGBT people, I am more comfortable and confident in addressing such issues than many other gay men and MSM. Yet, I am still hesitant about disclosing my sexual orientation to medical personnel in Jamaica. Based on my own experience and that of friends and acquaintances, I have no doubt that the criminalized, and hence stigmatized, status of consensual sex between men in Jamaica impedes the ability of gay men and other men who have sex with men to discuss their health, including their sexual health, fully and openly with health professionals.
31. From my research and experience, the HIV testing process usually includes some request for information about sexual activity or other factors that could account for testing positive, should that be the result. This information is necessary primarily for purposes of epidemiological surveillance and, to some degree, for purposes of assisting with HIV prevention education efforts. In my experience in Jamaica, particularly before coming out, I have found it extremely hard to be honest about my sexual identity because of the widespread discrimination and hostility that I have experienced and witnessed toward LGBT people in Jamaica. Based on my own personal and professional experience, I know my discomfort and fear is hardly unique; rather, it is common among gay men and other MSM in Jamaica.
32. In addition, UNAIDS and other international and regional agencies have identified homophobia as a major factor contributing to the Caribbean being the region of the world with the second highest HIV prevalence after sub-Saharan Africa. A copy of one report from UNAIDS to this effect is attached hereto and marked as Exhibit “MAT 6.”

Aggression and Attacks Against Gay Men

33. My research has shown that organizations such as the Inter-American Commission on Human Rights (IACHR) in its 2012 report regarding Jamaica have found, not surprisingly, that homophobia results in LGBTI individuals becoming victims of abuse and violence. As a gay man and activist, I have personally experienced such abuse and threats of violence. As evidence of the IACHR report, I attach hereto a copy of the same and mark it as Exhibit “MAT 8.”
34. From my research and experience, many Jamaican gay men and other MSM have been attacked because of our sexual orientation, even if we do not identify ourselves as gay or homosexual. People who are simply perceived to be MSM are equally at risk of violence.
35. In 2012 alone, J-FLAG received 68 separate reports from individuals of violence, discrimination, harassment and other forms of abuse perpetrated on the basis of their (perceived or actual) sexual orientation or gender identity/expression. I believe that these figures underrepresent the level of violence experienced by LGBT Jamaicans because, among other reasons, the Ministry of National Security has identified that generally the reporting on violence is low.¹ A copy of J-FLAG’s publication in 2012 compiling these reports is attached hereto and marked as Exhibit “MAT 7”. Those figures included the following:
- a) 36 men reported that they were victims of mob violence;
 - b) 15 men under the age of 18 reported that they were ostracized from their families and evicted from their homes; and
 - c) 5 bisexual men reported that they were beaten and stabbed.

¹ E.g., see *National Crime Prevention and Community Safety Strategy*, Crime Prevention and Community Safety Unit, Ministry of National Security (NCPCSS) (Kingston, 6 October 2010), online: https://www.mns.gov.jm/sites/default/files/documents/files/Nat%20Crime%20Prevt%20Com%20Safety%20Strat%20October%202010_1.pdf (retrieved 7 October 2015).

In other words, in 2012, on average, every 8 days, a person was the victim of a serious assault based on their actual or perceived sexual orientation.

36. In addition to the above-noted J-FLAG report, there have been reports on homophobia in Jamaica by several international entities such as the IACHR and the Non-Governmental Organization Human Rights Watch (HRW). As evidence of these reports, I attach hereto copies of the same and mark them respectively as Exhibits “MAT 8” and “MAT 9”.
37. When in Jamaica, I am constantly reminded that I might become a statistic in these reports. I and many Jamaican LGBT people know well the fear of such violence.
38. It is my experience that targeted assaults are routinely perpetrated against MSM or suspected MSM. The violence can be verbal or physical. Verbal assaults include homophobic slurs, and frequently include threats on a person’s life. Physical assaults include beatings, pistol whippings and stabbings. In the worst instances, MSM are killed. It has been my experience that police rarely, if ever, arrest any of the perpetrators, even when the crimes occur in plain view. This adds to the atmosphere of impunity for these attacks. I read the following from the Inter-American Commission on Human Rights in its 2012 Report on the Human Rights Situation in Jamaica, which I have found to be true:
- The IACHR is concerned that laws against sex between consenting adult males or homosexual conduct may contribute to an environment that, at best, does not condemn, and at worst condones discrimination, stigmatization, and violence against the LGBTI community. The law provides a social sanction for abuse, as LGBTI persons are already thought of as engaged in illegal activity. Because LGBTI individuals are believed to be engaged in criminal activity, it is logical to infer that police are less likely to investigate crimes against them.
39. In the past two years alone, I have recorded horrendous reports of violence against Jamaican LGBT people. Some of these attacks, which have been reported by local media, include:

- a) July 22, 2013: 16 year-old Dwayne Jones was stabbed, shot, run over by a car, and subsequently dumped in a nearby ditch for wearing a dress to a public street dance in Montego Bay. No one has been arrested for this murder. A copy of a report on this attack is attached and marked as exhibit “MAT 10.”²
- b) August 1, 2013: A mob attacked the home of two gay persons in St. Catherine. The police responded but there were no arrests. A copy of a report on this attack is included on the DVD attached marked as exhibit “MAT 11.”³
- c) August 10, 2013: A mob attacked a cross-dresser in St. Catherine. The police again responded but no arrests were made. A copy of a report on this attack is attached and marked as exhibit “MAT 12.”⁴
- d) August 22, 2013: A mob attacked five allegedly gay men, who were trapped in their house in Green Mountain, Manchester. The police responded but again no arrests were made. A copy of a report on this attack is included on the DVD attached marked as exhibit “MAT 11.”⁵
- e) August 26, 2013: A mob surrounded two allegedly gay men who were involved in a minor traffic accident in Old Harbour, St. Catherine. A member of the mob said that homosexuality might be acceptable elsewhere, but not in Old Harbour. The men had to flee into a nearby police station to escape harm. The police made no arrests. A copy of a report on this attack is included on the DVD attached and marked as exhibit “MAT 11.”⁶
- f) October 8, 2013: A mob firebombed the abandoned building in Montego Bay which was the former home of murdered teen, Dwayne Jones, where his surviving

² “Justice Minister Condemns Murder Of MoBay Cross-Dresser,” *The Gleaner*, Kingston, 29 July 2013, online: <http://jamaica-gleaner.com/power/46809> (accessed 7 October 2015).

³ “Alleged Gay men in St Catherine Home,” *CVM-TV*, Kingston, 1 August 2013, online: https://www.youtube.com/watch?v=bmL-Cyyn_KU (accessed 7 October 2015).

⁴ Rasbert Turner, “Cops rescue man in girl clothes - Save him from angry mob,” *The Star*, Kingston, 14 August 2013, online: <http://jamaica-star.com/thestar/20130814/news/news1.html> (accessed 7 October 2015).

⁵ “5 Gay Men Trapped by Angry Mob,” *CVM-TV*, Kingston, 22 August 2013, online: <https://www.youtube.com/watch?v=F1XxeqOIBao> (accessed 7 October 2015).

⁶ “Mob Descends on Old Harbour Police Station to demand Gay Men,” *CVM-TV*, Kingston, 26 August 2013, online: https://www.youtube.com/watch?v=A4_qE9IRM3M (accessed 7 October 2015).

friends continued to live. When the friends sought refuge in a police station, the police asked them to leave, stating that the station would itself be attacked if it was known to be “harbouring” gays. A copy of a report on these threats is attached and marked as exhibit “MAT 13.”⁷

- g) June 14, 2014: A mob attacked a young man at a shopping mall in May Pen, Clarendon because he was allegedly seen putting on lipstick. The police responded but no arrests were made. A copy of a report on this attack is included on the DVD attached marked as exhibit “MAT 11.”⁸
- h) August 28, 2014: A young Jamaican man who had filed a constitutional challenge against the anti-buggery law withdrew his claim because of threats against his family and himself. A copy of a report on this attack is attached and marked as exhibit “MAT 14.”⁹
- i) May 15, 2015: The Jamaica Star newspaper reported that a mob attacked and beat three schoolboys whom they accused of engaging in homosexual relations. A copy of a report on this attack is attached and marked as exhibit “MAT 15.”¹⁰
- j) Oct. 4, 2015: The Jamaica Observer reported that three men beat a man whom they accused of being gay because he was seen to be holding his penis while he slept. A copy of a report on this attack is attached and marked as exhibit “MAT 16.”¹¹

⁷ Adrian Frater, “House Occupied By Gays Firebombed,” *The Gleaner*, Kingston, 10 October 2013, online: <http://jamaica-gleaner.com/gleaner/20131010/lead/lead6.html> (accessed 7 October 2015).

⁸ “Gay Man saved from mob by police in May Pen, Clarendon,” *TVJ*, Kingston, 14 June 2014, online: <https://www.youtube.com/watch?v=Hmu7SvFTbnc> (accessed 7 October 2015).

⁹ “Jamaican Gay Man Drops Court Challenge Against Anti-Buggery Law,” *The Gleaner*, Kingston, 29 August 2014, online: <http://jamaica-gleaner.com/power/55113> (accessed 7 October 2015).

¹⁰ Horace Fisher, “Mob beats schoolboys caught in threesome,” *The Star*, Kingston, 15 May 2015, online: <http://jamaica-star.com/thestar/20150515/news/news1.html> (accessed 7 October 2015).

¹¹ Tanesha Mundle, “Man allegedly beaten for holding his penis while sleeping,” *The Jamaica Observer*, Kingston, 4 October 2015, online: http://www.jamaicaobserver.com/news/Man-allegedly-beaten-for-holding-his-penis-while-sleeping_19231808 (accessed 7 October 2015).

40. In the past 4 years, there have been other gruesome, anti-gay murders and attacks, with no arrests. On October 18, 2011, CVM TV, one of the major television stations on the island, reported that in the early hours of that morning armed men invaded the home of 16-year-old Oshane Gordon and his mother in the resort city of Montego Bay. The men chopped off his foot as he tried to escape through a window in order to slow his escape, and when they caught up with Oshane the men administered several more chops, killing him. CVM reported that Oshane was attacked because of “questionable relations” with another man. Oshane’s mother was also chopped several times. A copy of a report on this attack is included on the DVD attached marked as exhibit “MAT 11.”¹² This was the second homophobic murder reported by CVM in three months. On August 2, 2011, the station also reported that on that day a 26-year-old hair stylist, Ricardo Morgan, was almost completely decapitated in Kingston. He had been jeered about his gender non-conformity for some time and he was finally killed after an altercation with a group of men in his community about his sexual orientation. A copy of a report on this attack is included on the DVD attached marked as exhibit “MAT 11.”¹³

41. It is my experience that MSM do not trust the police and consequently many attacks against them in Jamaica are not reported to the police. As explained below, I believe MSM have good reason not to trust the police, because I have found that some police officers themselves are often responsible for attacks against gay men and other MSM and/or are unwilling to take seriously the investigation of attacks and threats when these are reported to them.

¹² *CVM-TV* Kingston, 18 October 2011, online: http://www.youtube.com/user/cvmtelevision#p/u/18/ZYgGDH_SgBI [at 9:50mins] (accessed 7 October 2015).

¹³ “Murder in Torrington Park,” *CVM-TV* Kingston, 2 August 2011, online: <https://www.youtube.com/watch?v=XYy-W7MgygE> (accessed 7 October 2015).

Treatment of the of the LGBTI community by the Jamaican police

42. Since 2010, I have researched and documented the attitude of Jamaican police toward gay people and it is my conclusion that, far from a desire to ‘serve and protect,’ Jamaican police are complicit in the horrendous abuses perpetuated against gay Jamaicans, and on many occasions are the perpetrators themselves. A copy of one report that I produced based on my research and interviews with LGBT Jamaicans is attached hereto and marked as Exhibit ‘MAT 17.’

43. It is my experience that anti-buggery laws are often used by the police to harass the gay community. I have found that police officers use the law to arrest gay men who are suspected of being gay. Thereafter, the police demand bribes from these men or their families. If the men or their families refuse to pay, the police publicly display the arrest record, or contact a popular tabloid to ensure that the record of arrest is published. It is my experience that a public display of an arrest record involving homosexuality creates a grave risk of that person being attacked or even killed. My research uncovered the following illustrative instances of police abuse of gay men in Jamaica:

- a) In June 2006, a police-instigated mob led to the death of a gay man, Victor Jarrett, on Dump-Up beach in Montego Bay.
- b) In 2007, police refused to act when the burial of a gay man was disrupted by a mob in Mandeville.
- c) In February 2008, police ‘rescued’ 3 gay men from a mob attack in Half-Way-Tree, Kingston and then proceeded to hurl homophobic insults at and pistol-whip the men on the way to the station.

d) In 2013 and 2014, there were several reports of anti-gay mob attacks (as described above) and despite being present, the police have never made any arrests in these very public assaults.

44. In April 2010, I was organizing the first 'Walk for Tolerance' in Montego Bay. On multiple occasions I requested permission and police presence for this event from the Freeport police station in Montego Bay. The office 'misplaced' my request several times. Eventually, I had to stage a solo 'sit-in' at the office in order to get police presence at the event. However, we were only supplied with a single police officer on a motorbike.

45. In February 2011, police raided two gay clubs in Kingston and Montego Bay.

46. In March 2011, the police officer who took my report of a death threat went on a homophobic tirade.

47. One case in which I was involved illustrates the commonplace environment of gratuitous, unprovoked harassment and violence too often faced by LGBT people in Jamaica. In September 2011, I assisted a young man who had been experiencing escalating levels of homophobic harassment, assaults, and threats to his life resulting in him being scared to leave his home in Montego Bay. His experiences, over just a two-month period, included the following:

a. On March 30, 2011, the young man was walking along Creek Street in Montego Bay when he passed a group of men under a tree near a popular landmark called "the Dome." One of the men jumped up to block his path and hurled homophobic insults at him. Another soon joined in, held the young man, pushed and shoved him. When the young man insisted that they release him, the men threatened to kill him. A nearby shop owner had to intervene to prevent them from carrying out their threats and he has since told the young man that he heard the same men plotting his murder.

- b. On April 13, 2011, the young man passed a man washing his car on the sidewalk and, instead of walking in the path of oncoming traffic, he walked behind the car-washer. The man peppered the young man with homophobic slurs and then proceeded to douse him with a bucket of dirty soap-water.
- c. On April 14, 2011, the young man reported these matters to the Barnett Street police station, but a supervising officer said the police could not intervene because the young man was unable to supply the names and addresses of his attackers. (Obviously, this is hardly a requirement for police to receive a report of a crime; rather, it calls for police to investigate as is their duty.)
- d. On April 21, 2011, the young man briefly left his home to empty the garbage and saw one of the men who had earlier threatened his life. He quickly ran inside but not before the man spotted him and told the young man that he was right to run as he will soon die.
- e. A further incident occurred on May 31, 2011. At about 6:30pm, the young man was walking down Foster Avenue and the tallest of the group of men who had committed the first assault came out of a house and said “Batty bwoy mi nuh tell yuh seh min nuh wah si yuh roun’ yah!” [“Battyman, didn’t I tell you I don’t want to see you around here anymore!”]. The assailant threw a stone at the young man, which fortunately missed. When the young man reported the matter to police, the recording officer said no crime had been committed as it was “just a stone-throwing.” I had to go to the police station with the young man to insist that the police take the report of the assault.

48. I have had conversations with senior politicians and policymakers in Jamaica who advised me that while the government is well aware of the severity of the homophobic attacks, it has done little to stop them, primarily because this would anger fundamentalist religious groups that are so politically active and dominate public discussion of human rights for LGBTI

people. For example, several religious groups organized a large rally in Half-Way-Tree on September 7 where speakers urged participants to contact their constituency candidates in the upcoming general elections and warn them that they would effectively lose votes if they supported repealing the anti-sodomy law. A copy of one news report about this rally is attached and marked as exhibit “MAT 18”.

Breaches of the Constitution

49. In light of the circumstances outlined above, I am advised by my attorneys and do verily believe that by virtue of the continued criminal prohibition and punishment of consensual sexual activity between men above the age of consent, the Defendant has violated and continues to violate my rights, and the rights of other gay men and MSM, contrary to various provisions of the Charter.

50. These provisions place me, as a gay man, at risk of being arrested, prosecuted and convicted – and subjected to all the stigma and adverse physical consequences of a criminal sentence – simply because, in the exercise of my own personal freedom, I seek to engage in consensual sexual conduct that is integral to the expression of my identity and intimacy with my partner, which activity is carried out in a private sphere. As a result I am forced to deny my identity and my relationship or contravene the law.

51. The impugned laws criminalize and penalize sexual conduct which, by my sexual orientation, I am naturally inclined to engage in with other, consenting male partners. This amounts to a direct and blatant denial of equality before the law for me and for other homosexual persons in Jamaica. This officially sanctioned stigmatization and discrimination by the state further invites and incites the public to subject me and other homosexual persons to unjustifiable discrimination in other spheres of life, including actual acts of – and the ever-present risk or threat of – blackmail, harassment, violence, and reduced and unequal access to facilities and services, including such services as protection that should be provided by law enforcement.

52. The fear of criminal sanctions – and the related stigmatization and discrimination that it encourages – impedes me, and impedes some other gay men and MSM in Jamaica, from accessing public health facilities geared towards the treatment and prevention of sexually transmitted infections, including HIV and AIDS. Moreover, public health campaigns and facilities geared towards HIV and AIDS prevention, treatment, care and support are impeded in being effectively directed to gay men and other MSM because of these criminal laws, even though gay men and other MSM are identified as a “key population” disproportionately affected by HIV and in need of evidence-based prevention, care, treatment and support as a matter of good public health practice.

53. It is my belief that there is no legitimate state interest that could be used to justify the criminalization of consensual sexual activities between adults, including between men, in a free and democratic society.

54. I am also advised by my attorneys and verily believe that I may humbly ask this Honourable Court to provide relief by way of the following remedies:

a) A declaration that, to the extent consensual sexual activities between persons age 16 or older, including persons of the same sex, are criminally prohibited and penalized under sections 76, 77 and 79 of the *Offences Against the Person Act, 1864* [“OAPA”], those sections contravene one or more of the following provisions of the *Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011* [“the Charter”] and are therefore, to that extent, of no force or effect:

- 1) the rights to liberty and to freedom of the person, guaranteed by sections 13(3)(a), 13(3)(p) and 14;
- 2) the right to security of the person, guaranteed by section 13(3)(a);
- 3) the right to freedom of expression, guaranteed by section 13(3)(c);

- 4) the right to equality before the law, guaranteed by section 13(3)(g);
 - 5) in the case of OAPA section 79, the right to freedom from discrimination on the ground of being male or female, guaranteed by section 13(3)(i)(i);
 - 6) the right to respect for and protection of private and family life, and of privacy of the home, guaranteed by section 13(3)(j)(ii); and
 - 7) the right to protection from inhuman or degrading punishment or other treatment, guaranteed by sections 13(3)(o) and 13(6);
- b) An order that sections 76 and 77 of the OAPA will continue to apply to penalize non-consensual sexual activity, including with a person under the age of sixteen;
 - c) An order that section 79 of the OAPA in its entirety is null, void, and of no force or effect;
 - d) For greater clarity, a declaration that to the extent sections 76 and 77 of the OAPA do not apply to consensual sexual activities between any persons age 16 or older, including persons of the same sex, then such activities are also excluded from the operation of sections 2, 29, 30, 31, 32, 33, 34, 35 and the First Schedule of the *Sexual Offences Act, 2009* [“SOA”], and regulations 16, 17, 18 and 21 of the *Sexual Offences (Registration of Sex Offenders) Regulations, 2012* [“SOA Regulations”];
 - e) In light of the unconstitutionality of the impugned provisions and the remedies sought above, an order prohibiting the Jamaica Constabulary Force from laying charges under section 79 of the OAPA, and under sections 76 and 77 of the OAPA in relation to consensual sexual activities between persons above the age of sixteen, including persons of the same sex, and further prohibiting the Director of Public Prosecutions or its agents from prosecuting any person accordingly;

f) Such other declarations and orders and such directions as this Honourable Court may consider appropriate for the purpose of enforcing or securing the enforcement of the aforementioned declaration and orders; and

g) Such further and/or other relief as this Honourable Court may deem just.

55. The facts and matters deposed to herein are, within my own personal knowledge, true and correct, except where otherwise stated or evidently based on other information or belief, in which case I verily believe the same to be true and correct.

SWORN TO by the SAID)
)
MAURICE ARNOLD TOMLINSON)
)
at) _____
) **MAURICE ARNOLD TOMLINSON**
on the day of November 2015)

Before me,

Notary Public : _____