

EXHIBIT 9

1 I, ROY DOUGLAS ELLIOTT, declare:

2 1. I am member in good standing of the Law Society of Upper Canada and certified
3 by the Law Society as a specialist in civil litigation. I am a founding partner in the Toronto,
4 Ontario-based law firm of Roy Elliott Kim O'Connor LLP and the president of the International
5 Lesbian and Gay Law Association ("ILGLaw"). I have direct personal knowledge of the
6 following facts and, if called upon to do so, I could and would competently testify thereto.

7 2. I have studied, written, and lectured extensively in the area of international human
8 rights law as it pertains to gays and lesbians. I recently published a symposium article entitled
9 *The Canadian Earthquake: Same Sex Marriage in Canada* in the Spring 2004 issue of the New
10 England Law Review. My other publications include an article entitled *Going to the Chapel:
11 The Case for Legal Recognition of Religious Weddings Between Two People of the Same Sex*,
12 delivered at the Conference on Marriage of the Sexual Orientation and Gender Identity
13 Committee of the Canadian Bar Association. I presented on the topic of same sex marriage in
14 Canada recently to the Pennsylvania Bar Institute. I have been a guest lecturer at Boalt Hall
15 School of Law and the University of Southern California Faculty of Law. Some of my many
16 speeches and publications on this topic are set out on my *curriculum vitae*, a true and correct
17 copy of which is attached hereto as Exhibit A.

18 3. I have instructed in civil litigation at the Bar Admission Course of the Law
19 Society of Upper Canada, and presented at various legal symposiums throughout Canada and
20 abroad, including presentations to the Commonwealth Lawyers Association, the American
21 Society of International Law, the International Bar Association and the Faculty of Law of the
22 University of Niigata, Japan. I was also invited to make a presentation before the Joint Standing
23 Committee on the Judiciary of the General Court of Massachusetts.

24 4. Twenty-five years ago, no nation, state, province, canton, or region explicitly
25 granted to same-sex couples the rights traditionally reserved to married couples. That situation
26 began to change in 1979, when the Dutch legislature passed a law granting succession rights to
27 same or opposite sex domestic partners of deceased tenants. (Act of 21 June 1979, *Staatsblad*

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1 1979 nr. 330, introducing arts. 1623h & 1623i of the *Civil Code*). Since that time, a substantial
2 number of countries, and political subdivisions thereof, have begun recognizing same-sex unions
3 and granting them the same, or nearly the same, status as marriages of opposite-sex couples.
4 Although most nations do not yet recognize marriages between same-sex couples, there is a
5 growing international trend toward recognizing such unions. This trend has emerged in both the
6 judicial and legislative arenas.

7 CANADA

8 5. In Canada, although sexual orientation is not explicitly mentioned among
9 prohibited grounds listed in section 15(1) of the Canadian Charter of Rights and Freedoms (“the
10 Charter”), the courts have consistently recognized it as an “analogous ground” entitled to
11 protection. (See, e.g., *M. v. H.*, (1999) 2 S.C.R. 3 (Ont. Supreme Ct.)). A true and correct copy
12 of that decision is attached hereto as Exhibit B.

13 6. In most recent appellate decisions of three provincial courts, one of which I
14 participated in as senior counsel, the courts unanimously held that excluding same-sex couples
15 from civil marriage violated the equality provisions of the Charter. (See *Halpern v. Toronto*,
16 (2003) 36 R.F.L. 5th 127 (Ont. Ct. App.); *EGALE Canada Inc. v. Canada (Atty. Gen.)* (2003)
17 Carswell BC 1659 (B.C. Ct. App.); and *Hendricks v. Canada* (2004) Carswell Que 1927 (Qué.
18 C.A.)) True and correct copies of these decisions are attached hereto as Exhibits C, D & E.

19 7. In the wake of the court decisions in British Columbia and Ontario, the Canadian
20 government has announced its intention to ensure that equal marriage is available in all Canadian
21 provinces through legislation. The Yukon Supreme Court recently ordered the territory's
22 government to issue marriage licenses and ordered them to pay costs (attorney's fees) for failing
23 to do so before litigation was initiated. Lawsuits have been filed in Nova Scotia and Manitoba
24 which will have the same result, as the provincial governments there have made it clear that they
25 will not oppose the rulings sought. Moreover, the Attorney General of Canada has recently
26 stated publicly that he will neither oppose nor seek to delay any such lawsuits. While the
27 Supreme Court of Canada will be considering the issue in the Reference to be heard in October,

1 that process and the legislative process that will follow may become superfluous as a result of an
2 expected series of unopposed rulings from the remaining provincial and territorial courts.

3 8. Canada has no residency requirement for persons wishing to marry here. Many
4 foreign nationals have married here in same sex unions, including hundreds of couples from the
5 USA. I am aware that litigation is planned or proceeding seeking domestic recognition of
6 Canadian same-sex marriages in Hong Kong and the United States.

7 EUROPE

8 9. The European Court of Human Rights, which hears cases involving all member
9 states of the Council of Europe, has consistently applied a strict scrutiny analysis to its member
10 states' denials of rights based on sexual orientation. (See, e.g., *Smith & Grady v. United*
11 *Kingdom* (2001) 31 E.H.R.R. 24 (invalidating dismissals from the armed forces based on sexual
12 orientation); *Mouta v. Portugal* (2001) 31 E.H.R.R. 47 (holding that child custody decisions
13 cannot be based on the sexual orientation of a parent); *Karner v. Austria* (2004) 38 E.H.R.R. 24
14 (holding that unequal treatment between the unmarried same-sex partner and the unmarried
15 opposite-sex partner of a deceased tenant was discriminatory and therefore a human rights
16 violation). True and correct copies of these cases are attached hereto as Exhibits F, G & H.

17 10. Currently two countries, the Netherlands and Belgium, grant full civil marriage
18 rights to same-sex couples with no distinction between same-sex and opposite-sex unions. Both
19 countries amended their family codes to eliminate gender-specific language.

20 11. Several other European countries grant to same-sex couples all or extensively the
21 same rights as granted to opposite-sex married couples. Those nations include Norway, Sweden,
22 Denmark, Finland, Hungary, Luxembourg, Portugal, Iceland, the Czech Republic, Germany and
23 France.

24 12. The majority of Spanish regions and several Swiss cantons grant quasi-marriage
25 rights to same sex couples.

26 13. Other national European legislatures are increasingly moving toward recognition
27 of same-sex marriages. Legislation that would grant full civil marriage rights to same-sex

1 couples is pending in Sweden and is widely expected to pass. Similar legislation granting
2 recognition of civil unions has been introduced by the government in the United Kingdom, and
3 passage by Parliament is expected by the end of the year. The new Prime Minister of Spain, Jose
4 Luis Rodriguez Zapatero, has made a commitment in the Parliament to introduce legislation
5 granting full recognition of same-sex marriages. Since he was recently elected with wide support
6 in Spain, this measure is expected to pass. Once that occurs, it is likely that at least some of
7 Spain's former colonies and trading partners in Latin America will follow suit.

8 UNITED NATIONS

9 14. Although the United Nations Human Rights Commission has not yet found that
10 marriage discrimination violates the International Covenant on Civil and Political Rights
11 ("ICCPR"), last year Brazil introduced a resolution on human rights and sexual orientation
12 before the United Nations that would declare that fundamental human rights and freedoms must
13 not be denied on the basis of sexual orientation. The proposal has been endorsed by Austria,
14 Belgium, Brazil, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece,
15 Ireland, Italy, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden and
16 the United Kingdom. A true and correct copy of that resolution is attached hereto as Exhibit J.

17 OTHER INTERNATIONAL DEVELOPMENTS

18 15. The Constitutional Court of South Africa has, on three occasions, held that same-
19 sex couples cannot be denied rights granted to opposite-sex married couples. In *National*
20 *Coalition for Gay and Lesbian Equality v. Minister of Home Affairs*, 1999 (3) BCLR 280(c);
21 1999 (3) SA 173(c), the high court held unanimously that the South African government could
22 not deny same-sex partners of permanent residents the right to immigrate while providing that
23 right only to married different-sex partners. In *Satchwell v. President of the Republic of South*
24 *Africa*, 2001 (12) BCLR 1284 (T), the high court held, by ten votes to zero, that the denial of
25 spousal benefits, including a surviving spouse's pension, to same-sex couples violated the South
26 African Constitution. In a third case, *Du Toit v. Minister for Welfare and Population*
27 *Development*, 2002 (CC), the court applied its reasoning in the previous two cases in holding that
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1 same-sex couples must be granted the same rights to jointly adopt children as married opposite-
2 sex couples. True and correct copies of these decisions are attached hereto as Exhibits K, L &
3 M. A case seeking marriage equality was recently filed in a South African court. Given the
4 trends in South African law, the plaintiffs in that case are widely expected to prevail.


5 16. Other national courts, while not considering the direct question of same-sex
6 marriage, have held that various specific benefits reserved for unmarried opposite-sex couples
7 must be extended to same-sex couples as well. For example, in *El-Al Israel Airlines, Ltd. v.*
8 *Danilowitz* (1994), the Israeli Supreme Court held that flight benefits extended to unmarried
9 opposite-sex partners of employees must be extended to same-sex partners as well. A true and
10 correct copy of that decision is attached hereto as Exhibit N.

11 17. South Africa and New Zealand grant to same-sex couples all or extensively the
12 same rights as granted to opposite-sex married couples.

13 18. Several sub-national governmental entities have also granted marriage or quasi-
14 marriage rights to same-sex couples. Those include the City of Buenos Aires, Argentina; Rio
15 Grande do Sul in Brazil; New South Wales in Western Australia; and Queensland, Australia.

16 19. Legislation that would grant full civil marriage rights to same-sex couples is
17 pending in Taiwan and is widely expected to pass.

18 I swear under penalty of perjury that the foregoing is true and correct. Sworn in Toronto,
19 Ontario, Canada, on August 31, 2004.

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21 By: 
22 ROY DOUGLAS ELLIOTT
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