Court No: 27168

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)

BETWEEN:

THE BRITISH COLUMBIA COLLEGE OF TEACHERS,

APPELLANT

AND:

TRINITY WESTERN UNIVERSITY and DONNA GAIL LINDQUIST,

RESPONDENTS

FACTUM OF THE APPELLANT

NELSON & VANDERKRUYK
BARRISTERS AND SOLICITORS
13TH FLOOR - 335 BURRARD ST.
VANCOUVER, B.C.
V6C 2G8
TEL: 604-684-1311
FAX: 604-684-6402

THOMAS R. BERGER, Q.C.
COUNSEL FOR THE APPELLANT

KUHN & COMPANY
BARRISTERS AND SOLICITORS
300 - 31935 SOUTH FRASER WAY
ABBOTSFORD, B.C.
V2T 5N7
Tel: 604-864-8877
Fax: 604-864-8867

ROBERT G. KUHN
SOLICITORS FOR THE RESPONDENTS

GOWLING, STRATHY & HENDERSON
BARRISTERS AND SOLICITORS
2600 - 160 ELGIN ST.
OTTAWA, ONTARIO
K2P 2C4
TEL: 613-233-1781
FAX: 613-563-9869

OTTAWA AGENTS FOR APPELLANT

MCCARTHY, TETRAULT
BARRISTERS AND SOLICITORS
1400 - 40 ELGIN STREET
OTTAWA, ONTARIO
K1P 5K6
Tel: 613-238-2000
Fax: 613-563-9386

OTTAWA AGENTS FOR RESPONDENTS

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PART I

STATEMENT OF FACTS

THE PARTIES

1. In 1988, the British Columbia College of Teachers was established under the Teaching Profession Act, S.B.C. 1987, c. 19.[1]

Reasons, Goldie, J.A., Appellant's Record, Vol. 3, p. 464

2. The Council of the College consists of 20 persons: 15 members elected by current members of the College, two appointed by the Lieutenant-Governor in Council, two by the Minister of Education and one nominated by the Deans of the Faculties of Education of the province's public universities and then appointed by the Minister.

Reasons, Goldie, J.A., Appellant's Record, Vol. 3, p. 464

3. The Council of the College has three main functions: first, it has authority to approve teacher education programs which prepare teachers for the public schools; second, it has authority to set standards for and to certify teachers to teach in the public schools; and third, it has the power to discipline members when necessary.

Teaching Profession Act, ss. 21(i), 23(1)(d) and 23(2)

4. Teachers and administrators who work in the public school system must be certified by the College of Teachers, and must maintain current membership in the College: School Act R.S.B.C. 1996, c. 412, s. 19.

5. Teachers who work in independent schools, including denominational schools, may be certified by the College or certified by the Inspector under the Independent Schools Act, R.S.B.C. 1996, c. 216, s. 5.

6. Trinity Western University ("TWU") was incorporated as a junior college under the Trinity Junior College Act, S.B.C. 1969, c. 44. It was intended from the outset that it should be a religiously-based institution.

Reasons, Goldie, J.A., Appellant's Record, Vol. 3, pp. 462 - 463

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[1] Now R.S.B.C. 1996, c. 449.

7. In 1972, the statute was amended to change the name of the institution to Trinity Western College: S.B.C. 1972, c. 65. In 1979 the statute was amended to permit the institution to grant baccalaureate degrees: S.B.C. 1979, c. 37. In 1986, the institution acquired its present name, Trinity Western University: S.B.C. 1985, c. 63.

8. In 1996, Donna Lindquist was a third year student at TWU.

9. TWU operates under the aegis of the Evangelical Free Church. Two-thirds of the University's Board of Governors must be members of the Evangelical Free Church.

Appellant's Record, Vol. 3, p. 351, para. 8

10. TWU's Community Standards Code makes it clear that TWU is "an arm of the church". It reads:

> "The mission of Trinity Western University, as an arm of the church, is to develop godly Christian leaders: positive, goal-oriented university graduates with thoroughly Christian minds; growing disciples of Jesus Christ who glorify God through fulfilling The Great Commission, serving God and people in the various marketplaces of life."

Appellant's Record, Vol. 1, p. 51, p. 55

11. Each student who is admitted to TWU is required to subscribe to a contract relating to "Responsibilities of Membership in the [TWU] Community" (Appellant's Record, Vol. 1, pp. 55 - 56). By the contract each student agrees to:

> "REFRAIN FROM PRACTICES THAT ARE BIBLICALLY CONDEMNED. These include but are not limited to drunkenness (Eph. 5:18), swearing or use of profane language (Eph. 4:29, 5:4, Jas 3:1-12), harassment (Jn 13:34-35; Rom. 12:9-21; Eph. 4:31), all forms of dishonesty including cheating and stealing (Prov. 12:22; Cor. 3:9; Eph. 4:28), abortion (Ex. 20:13; Ps. 139:13-16), involvement in the occult (Acts 19:19; Gal. 5:19), and sexual sins including premarital sex, adultery, homosexual behaviour, and viewing of pornography (I Cor. 6:12-20; Eph. 4:17-24: I Thess. 4:3-8; Rom. 1:26-27; I Tim. 1:9-10). Furthermore married members of the community agree to maintain the sanctity of marriage and to take every positive step possible to avoid divorce." (Emphasis added)

Appellant's Record, Vol. 1, p. 56

12. The contract that students must sign says that students who are invited to become members of the community "but cannot with integrity pledge to uphold the application of these

standards [set out in the contract] are advised not to accept the invitation and to seek instead a living-learning situation more acceptable to them": Appellant's Record, Vol. 1, p. 56.

13. Faculty members are expected to sign a similar contract on the basis that the contract reflects their own beliefs. Faculty agree to affirm and support the application of TWU's community standards to students, and to set aside personal liberty in accordance with the University mission.

Appellant's Record, Vol. 1, pp. 52 - 53

14. These contracts are based on the Evangelical Free Church's belief that every word of the Bible is divinely inspired.

Appellant's Record, Vol. 3, p. 351, paras. 9 - 16

15. Reverend Dr. Bruce Milne, in his affidavit filed on behalf of TWU (Appellant's Record, Vol. 3, p. 361) and Reverend Dr. Richard Penner, President of the Evangelical Free Church of Canada, in his affidavit filed on behalf of TWU (Appellant's Record, Vol. 3, p. 349) have cited Biblical references that the Free Church relies on in asserting that the Bible condemns "homosexual practice"; both Dr. Milne and Dr. Penner refer to the books of Genesis, Leviticus, Romans and Corinthians.

16. Dr. Milne is a prominent theologian of the Evangelical Free Church. He quotes, in his affidavit, what was written in Romans 1:26, 27, by the Apostle Paul:

> "*26: Because of this, God gave them over to shameful lusts. Even their women exchanged natural relations for unnatural ones.*
>
> *27: In the same way the men also abandoned natural relations with women and were inflamed with lust for one another. Men committed indecent acts with other men, and received in themselves the due penalty for their perversion.*"

Appellant's Record, Vol. 3, p. 364

17. This passage is, according to Dr. Milne, the principal basis for the Free Church's belief that homosexual behaviour is Biblically condemned: Appellant's Record, Vol. 3, p. 364. The passage is cited in the contract that faculty and students must sign.

18. In I Corinthians 6:9, 10, which is also cited in the contract, and also relied on by Dr. Milne, Paul said:

> *"Do you not know that the wicked will not inherit the Kingdom of God? Do not be deceived: Neither the sexually immoral nor idolaters nor adulterers nor male prostitutes nor homosexual offenders nor thieves nor the greedy nor drunkards nor slanderers will inherit the Kingdom of God."*
>
> Appellant's Record, Vol. 3, p. 364

19. Since 1985 TWU has offered education degrees. Since the inception of its B. Ed. program, students at TWU have taken the first four years of the program at TWU but have taken their fifth year, the professional teacher education component, called the Professional Development Program (PDP), through Simon Fraser University (SFU), one of British Columbia's four public universities.

Appellant's Record, Vol. 1, p. 32, paras. 11 - 15

20. The TWU students, after completion of their fifth year through SFU, receive a TWU education degree. TWU's graduates, holding the degree and having successfully completed the SFU Professional Development Program, are entitled to be certified by the College as teachers based on a recommendation for certification from SFU. These TWU graduates are then entitled to teach in B.C.'s public schools. For the College's purposes, the recommendation from SFU is necessary for certification of TWU graduates.

Reasons, Goldie, J.A., Appellant's Record, Vol. 3, p. 467

THE BYLAWS AND POLICIES OF THE COLLEGE

21. The College, following its establishment in 1988, reviewed the teacher education programs at B.C.'s three[2] public universities (UBC, SFU and the University of Victoria) and, following the review, approved them.

Appellant's Record, Vol. 1, p. 35

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[2] The fourth public university, the University of Northern British Columbia, was later established: University of Northern British Columbia Act, R.S.B.C. 1996, c. 472.

22. On October 27, 1994 the College issued Guidelines for Proposals For New Teacher Education Programs.

Appellant's Record, Vol. 1, p. 120

23. The College Bylaws provide that the Council of the College "shall establish criteria for the approval for certification purposes of teacher education programs".

Bylaw 5, Appellant's Record, Vol. 1, p. 82.

24. Pursuant to Bylaw 5, the Council has established the criteria that teacher education programs must meet, and the procedure that must be followed to obtain approval.[3]

25. Pursuant to the procedure laid down in the College's Policies, a Program Approval Team is appointed. Its recommendation goes to the Teacher Education Programs Committee (TEPC). The recommendation of the TEPC goes before the Council.

> "5. Council will consider recommendations from the Teacher Education Programs Committee for approval of teacher education programs in accordance with Bylaw 5C."

APPLICATION BY TWU

26. In 1995 TWU applied to the College for approval of its own five-year teacher education program. TWU wished to have TWU students do all five years of their education studies toward a B.Ed. degree through TWU. The students would no longer be required to do their 5th year through SFU or any other public university. They would complete the professional teacher education component exclusively through TWU.

Reasons, Goldie, J.A., Appellant's Record, Vol. 3, p. 469

27. The College of Teachers, following an initial review, appointed a Program Approval Team to prepare a report on TWU's application. The Program Approval Team recommended approval of TWU's teacher education program for a 5-year interim period, subject to certain

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3 The criteria and the procedure are set out in Policy 5.C: Appellant's Record, Vol. 1, p. 83. The criteria are set out at P5.C.01(b), the procedure at P5.C.03.

conditions. In the course of its report the Program Approval Team raised the following question (Appellant's Record, Vol. 2, p. 237):

> "A question the College must consider is whether the public interest is served by a teacher education faculty with the mission statement of Trinity Western. Teachers who hold certificates of qualification issued by the College of Teachers are eligible for employment in the public schools of the province which, while non-sectarian by law, include students from families of many non-Christian faiths, Christians of different faiths, and non-believers. While there is no question of the right of teachers to their religious beliefs, the College must assure itself that graduates of a program such as that of Trinity Western can take their places in a public school system and maintain a non-sectarian position in their daily work with children. For many years teachers with strong beliefs in their faiths have been able to function in this non-sectarian way in B.C. public schools. On the other hand they were not graduates of programs in which the student's "...faith and disciplinary development are integrated - not compartmentalized." (p. 5, *Trinity Western University 1995/96 Academic Calendar*). While this integration of faith and discipline is appropriate to the Christian School movement it is not suitable for the B.C. public school system." (Emphasis added)

28. The Program Approval Team then outlined TWU's response to this concern (Appellant's Record, Vol. 2, p. 237):

> "On the other hand, is there any reason to believe that a teacher with this teacher education background is not able to function effectively in a non-sectarian system? Dr. Neil Snider, President, Trinity Western University states:
>
> > ... we are a liberal arts and sciences university which focuses on personal development. Our curriculum develops a broad knowledge base and prepares students for a variety of related careers.
> >
> > We firmly believe this kind of education, when integrated with the Christian faith to develop the whole person, is the very best preparation for the rapidly-changing world our graduates will face." (*p. 4, Trinity Western University 1995/96 Academic Calendar*)."

29. The Program Approval Team concluded:

> "The Program Approval Team concludes that the specific nature of the Trinity Western program should not be an impediment to it being approved for certification purposes. At the same time, the team believes that the program needs to be carefully monitored to ensure that its graduates do continue to meet the needs of the B.C. public school system. Our deliberations about program approval were based upon the ... criteria as established by Policy P5.C.01."
>
> Appellant's Record, Vol. 2, p. 238

30. The Program Approval Team went on to set out eleven formal conclusions regarding TWU's program, conclusions which tracked the College's criteria and some of which proposed conditions to be met by TWU.

Appellant's Record, Vol. 2, pp. 241 - 250

31. The Program Approval Team recommended approval of TWU's program, subject to eight conditions.

Appellant's Record, Vol. 2, p. 259

32. The College's Teacher Education Programs Committee (TEPC) considered the recommendation of the Program Approval Team and brought a motion before the Council of the College. The motion by the TEPC recommended approval subject to the eight conditions which the Program Approval Team had urged, conditions reflecting concerns about the academic resources, e.g., the state of the library, and the qualifications of faculty on the one hand, and concerns about the sectarian nature of the teacher education program on the other hand.

> "That the teacher education program proposed by Trinity Western University be approved for a 5-year interim period on the basis of the report of the Program Approval Team and subject to the following conditions:
>
> 1. That the B.C. College of Teachers monitor the program annually so that the context of the program meets criterion P 5 C 01 (b) 1.1. [P 5 C 01 (b) 1.1 requires an appropriate institutional setting in terms of depth and breadth of personnel, research and other scholarly activity and commitment to teacher education.]
>
> 2. That Trinity Western University make substantial improvements to its library resources, particularly with reference to curriculum materials.
>
> 3. That, based on the admission policy reviewed by the Program Approval Team, the B.C. College of Teachers monitor the application of admissions policy to ensure that applicants who meet the requirements are not refused admission on the basis of a differing world view or on the basis of having completed previous course work at a public university.
>
> 4. That Trinity Western University provide a program only for grades K-7.
>
> 5. That Trinity Western University select its faculty associates from the public school system, and that the selection process involve a member of the College appointed in consultation with the College.

6. That Education 365 (Social Issues in Canadian Education) be mandatory for all education students.

7. That in the final year of the interim program approval, an in-depth evaluation will be conducted by an independent external review team selected by the College in consultation with Trinity Western University.

8. The process described by Trinity Western University for the annual ongoing review of its teacher education program is implemented and includes representation from the College."

Appellant's Record, Vol. 2, p. 277

33. The motion by the TEPC came before the Council.

34. On May 17, 1996, the Council passed a motion rejecting the TWU program. The motion was based on two separate grounds:

> "That the application for a new teacher education program by Trinity Western University be denied because [1] it does not fully meet the criteria and because [2] it is contrary to the public interest to approve a teacher education program offered by a private institution which appears to follow discriminatory practices that public institutions are, by law, not allowed to follow."

Appellant's Record, Vol. 2, p. 291

35. The rejection meant that graduates of TWU would still be required to do their 5th year of professional teacher education through SFU or one of the other public universities.

36. Following the motion to deny approval to TWU's program, the Council passed a motion that "the Program Approval Sub-Committee prepare a statement of reasons offered in debate of the [TWU] application for approval of a teacher education program, these reasons to be presented to Council during the current session of Council". As a result, on May 22, 1996, the Acting Registrar wrote to TWU elaborating the concerns behind the two grounds of rejection:

> "During the debate which preceded the defeat of the Teacher Education Programs Committee recommendation, members of Council raised a number of issues. ... Council members considered all or some of these issues when voting on the recommendation.
>
> · Discriminatory practices at Trinity Western University , specifically the requirement for students to sign a contract of 'Responsibilities of Membership in the TWU Community.'

· The adequacy of library resources: Council members expressed the view that resources should be improved prior to the inception of the program.

· Recommendations in the report of the Program Approval Team for monitoring several aspects of the program raised doubts about the overall readiness of the program for approval.

· The suitability and preparedness of graduates to teach in the diverse and complex social environments found in the public school system.

· The ability of the faculty to provide a program of sufficient breadth and depth.

· The limited extent of public school experience of the faculty.

· A concern that the presentation and consideration of social issues would be limited by the requirement of the program for commitment to a homogeneous world view.

(Emphasis added)

Appellant's Record, Vol. 2, pp. 290 - 292

37. TWU filed a request for reconsideration as provided for in the College's policies: Appellant's Record, Vol. 2, p. 289. The request for reconsideration was heard by the Council on June 14th, 1996. Representatives of TWU made a presentation to Council and responded to questions from Council members.

38. On June 29, 1996, the request for reconsideration was rejected. The motion passed by the Council on that date read:

> "That Trinity Western University's appeal in regard to the College's denial of its application for approval of a Teacher Education Program be denied because Council still believes the proposed program follows discriminatory practices[4] which are contrary to the public interest and public policy which the College must consider under its mandate as expressed in the *Teaching Profession Act*."
>
> Appellant's Record, Vol. 2, p. 320

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[4] Public institutions, federal or provincial, which are subject to the *Charter of Rights*, may not discriminate on the ground of sexual orientation. This is true as well of public institutions subject to the Canadian Human Rights Act R.S.C. 1996, c. 44 and public institutions subject to the B.C. Human Rights Act S.B.C. 1984, c. 22: University of British Columbia v. Berg [1993] 2 S.C.R. 353 (Supreme Court of Canada).

39. The Council's concerns were elaborated in the College's Report to Members (Fall, 1996). They emphasized *Charter* values and the issue of professional preparedness.

Appellant's Record, Vol. 2, pp. 325 - 326

THE PROCEEDINGS

40. On October 18th, 1996, TWU filed a Petition under the Judicial Review Procedure Act, R.S.B.C. 1979, c. 209[5]. The Petition was also brought on behalf of a student, Donna Lindquist. It was argued that the College had exceeded its powers under the Teaching Profession Act and that it had violated Donna Lindquist's *Charter* rights.

41. Mr. Justice Davies, the judge at first instance, found that the Council of the College had acted without jurisdiction and granted an order to quash the decision of the Council and an order in the nature of mandamus requiring the Council to approve TWU's proposed teacher education program subject to certain conditions.

Order, Appellant's Record, Vol. 3, p. 398

42. The Court of Appeal, in a two to one decision, upheld the order of Davies J. Goldie J.A. wrote for the majority, Braidwood J.A. concurring. Rowles J.A. dissented.

43. The B.C. College of Teachers applied for leave to appeal. On December 9th, 1999, the Supreme Court of Canada granted leave.

Order, Appellant's Record, Vol. 1, p. 22

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5 Now R.S.B.C. 1996, c. 241

PART II

ISSUES

A. THE COLLEGE'S MANDATE: WERE DISCRIMINATORY PRACTICES AN EXTRANEOUS CONSIDERATION?

1. Protection of Minorities

2. The Council's Powers under the Teaching Profession Act

B. WAS THE DECISION OF THE COUNCIL PATENTLY UNREASONABLE?

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   a) Freedom of Religion

   b) Freedom of Expression

   c) Freedom of Association

2. Was there a Violation of Donna Lindquist's Rights Under Section 15?

3. If there was a Violation of Donna Lindquist's *Charter* Rights, it was Justified Under Section 1

   a) Compelling and Substantial Interest

   b) Rational Connection

   c) Minimal Impairment

   d) Proportionality

PART III

ARGUMENT

INTRODUCTION

44. This case is really an administrative law case. Did the Council exceed its jurisdiction, when it denied approval to TWU's five-year B.Ed. program, by taking into account TWU's discriminatory practices? Was this an extraneous consideration? This is a question of law, and the standard of correctness applies.

45. If the Council was entitled to consider "discriminatory practices", was there evidence of such practices and of discriminatory ramifications (to use the phrase of Rowles, J.A.)? Here the test is whether the decision of the Council was patently unreasonable.

46. TWU is a private institution and is entitled, in its admissions policy and in its hiring policy, to discriminate against homosexuality, homosexual persons and homosexual behaviour. This appeal is about whether TWU's policy towards homosexuality, homosexual persons and homosexual behaviour is outside the College's purview when it comes to consider TWU's proposed five-year B.Ed. program to prepare students to teach in the public schools..

47. Finally, there is the question whether, given that there were other issues still outstanding relating to the readiness of TWU's program under the College's criteria, the courts below ought to have made an order requiring the Council to approve TWU's teacher education program.

A. THE COLLEGE'S MANDATE

1. Protection of Minorities

48. There has been, since the Second World War, in Canada and the United States, an evolving recognition that certain categories of persons are to be protected from discrimination. The development of these concepts may be observed in relation to measures relating to Jews, blacks and, recently, homosexual persons.

49. In Re Drummond Wren, [1945] 4 D.L.R. 674, a path-breaking decision of the Ontario High Court, it was held that a restrictive covenant forbidding the sale of land to Jews was contrary to public policy and could be struck down on that ground. Mackay J., in construing the covenant, relied on emerging ideas of equality and justice: see Mackay J. at p. 676 to 679.

50. In Canada we have also seen the passage of the Canadian Bill of Rights in 1960 and the passage of human rights statutes at the federal level and in every province.

51. The culmination in Canada of this movement to protect the vulnerable from discrimination occurred with the adoption of Section 15 of the *Charter of Rights* in 1982 (it came into force in 1985).

52. Since 1985 the Supreme Court of Canada has elucidated the scope of s. 15. Discrimination on the ground of sexual orientation has come to be considered as quite as opprobrious as discrimination on the ground of race or religion. Krever J.A. traced the development of the law in Haig v. Canada (1992), 94 D.L.R. (4th) 1 (Ont. C.A.).

53. In Haig v. Canada, it was held that, pursuant to s. 15 of the *Charter*, the Canadian Human Rights Act should be interpreted as including a prohibition on discrimination on the grounds of sexual orientation. Krever J.A., writing for the Ontario Court of Appeal, referred to the evolution of concepts of human rights since World War II. He wrote, at p. 10:

> "One need not look beyond the evidence before us to find disadvantage that exists apart from and independent of the legal distinction created by the omission of sexual orientation as a prohibited ground of discrimination in s. 3(1) of the Canadian Human Rights Act. The social context which must be considered includes the pain and humiliation undergone by homosexuals by reason of prejudice towards them. It also includes the enlightened evolution of human rights social and legislative policy in Canada, since the end of the Second World War, both provincially and federally. The failure to provide an avenue for redress for prejudicial treatment of homosexual members of society, and the possible inference from the omission that such treatment is acceptable, create the effect of discrimination offending s. 15(1) of the Charter."
>
> (Emphasis added)

54. The Supreme Court of Canada has held that homosexual persons are entitled to the same measure of protection as victims of discrimination on the ground of race, religion or any of the

other grounds enumerated in the *Charter*, s. 15: Egan v. Canada, [1995] 2 S.C.R. 513. And see Vriend v. Alberta [1998] 1 S.C.R. 493, at para. 100.

55. Since 1993 the B.C. Human Rights Act has prohibited discrimination on the ground of sexual orientation. See S.B.C. 1993, c. 27, s. 2. In 1996 Canada amended the Canadian Human Rights Act, 1976 - 1977, c. 33 to include sexual orientation as a prohibited ground of discrimination. See R.S.C. 1996, c. 44.

56. These human rights statutes exemplify evolving Canadian values. In M. v. H., [1999] 2 S.C.R. 3 the Supreme Court of Canada held that Ontario legislation which excluded homosexual couples from the definition of common law spouses violated s. 15. And see B.C. Family Relations Amendment Act, S.B.C. 1997, c. 20, which provides that same-sex couples can seek child support and spousal support on the same basis as common law spouses.[6]

57. In the United States the protection of minorities has been a matter of continuing concern. In Bob Jones University v. U.S.; Goldsboro Christian Schools 461 U.S. 574, 76 L.Ed. 2d 17, 103 S.Ct. 2017 (1983), private religious institutions which discriminated against blacks on the grounds of race, a practice these institutions believed to be Biblically-inspired, were denied tax-exempt status by the I.R.S. on the ground that racial discrimination was against U.S. public policy. The U.S. Supreme Court upheld the I.R.S. Burger C.J., writing for the court, held that the I.R.S. had a mandate to consider the public interest in determining whether these institutions, which discriminated on the ground of race, should receive a tax benefit by way of exemption.

58. Burger C.J. held, at p. 593 (U.S.):

> "... there can no longer be any doubt that racial discrimination in education violates deeply and widely held views of elementary justice."
>
> (Emphasis added)

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[6] And see the federal bill, entitled Modernization of Benefits and Obligations Act, introduced in Parliament on February 10, 2000, providing that same-sex couples should be treated on the same footing as heterosexual couples in a common law relationship.

59. Burger C.J. cited executive orders "demonstrating the commitment of the Executive Branch to the fundamental policy of eliminating racial discrimination". Burger C.J. said at pp. 173-174, L.Ed. (461 U.S. 592):

> "History buttresses logic to make clear that, to warrant exemption under s. 501(c)(3), an institution must fall within a category specified in that section and must demonstrably serve and be in harmony with the public interest. The institution's purpose must not be so at odds with the common community conscience as to undermine any public benefit that might otherwise be conferred."

60. Burger C.J. held that the I.R.S. had a mandate to consider the public interest in determining whether these institutions, which discriminated on the ground of race, should receive a tax benefit by way of exemption.

61. TWU argues that it is not subject to the *Charter* or to federal or provincial human rights statutes. This is not in dispute in this case.

62. Goldie J.A., for the majority in the court below, took the view that the Council, in considering TWU's policy regarding homosexuality, was engaged in interpreting and applying the *Charter* and human rights legislation, a matter he held to be beyond its jurisdiction: Reasons, Appellant's Record, Vol. 3, p. 497, para. 105.

63. But this case is not a *Charter* case or a human rights case. The Council was not interpreting or applying the *Charter* or the human rights statutes. In Ross v. New Brunswick School District No. 15 [1996] 1 S.C.R. 825, La Forest, J., for the Court, at pp. 856 - 858, wrote that teachers in the public schools are a "medium for the transmission of values". Since teachers impart values as well as learning, the Council was looking to the *Charter* and the human rights statutes to guide it in its assessment of the potential impact of the discriminatory practices exemplified by the contracts required to be signed by faculty and students at TWU.

64. In B.C. v. Heerspink, [1982] 2 S.C.R. 145, Lamer J., as he then was, writing for the Supreme Court of Canada, wrote, at p. 229:

> "When the subject-matter of a law is said to be the comprehensive statement of the 'human rights' of the people living in that jurisdiction, then there is no doubt in my mind that the people of that jurisdiction have through their legislature clearly indicated that they consider that that law, and the values it endeavors to buttress and protect, are, save their constitutional laws, more important than all others."

65. The Council, in determining whether to approve a teacher education program under the Teaching Profession Act is entitled to consider these values as they bear on the education, professional responsibility and competence of students who may be graduates of a teacher education program. Will graduates of a five-year TWU program be perceived as upholding Canadian values? Are they professionally prepared to teach in the public schools of the province? What values will they transmit? Will they provide a supportive learning environment for all children? Are they equipped to deal with the issues relating to homosexuality and homophobia that may arise in the classroom and in the school?

66. It isn't a question of denying TWU the right to instill beliefs, or denying TWU graduates the right to hold those beliefs. It is a question of determining whether, before students in an avowedly sectarian program begin teaching in the public schools, there should be a period of exposure to the values of the wider world, to a world view wider than TWU's.

67. Rowles, J.A., dissenting in the court below, wrote, at Appellant's Record, Vol. 3, p. 558, para. 233:

> "... At issue here is not the validity of TWU's right to exclude gays and lesbians from its university community, or its right to require members of the community to sign the Community Standards Contract. The College does not argue that TWU is not entitled to make this a requirement under the exemption in the *Human Rights Code*. The question is whether these requirements, which are permissible within the context of the TWU community, may have discriminatory ramifications beyond that community and, in particular, in the public school system."

2. The Powers of The Council under the Teaching Profession Act

68. Given TWU's policy, as the Council saw it, of discriminating against homosexual persons, the Council was entitled to be concerned about two things:

a) that teachers in the public schools should be perceived as upholding Canadian secular values. Teachers in the public schools are a medium for the transmission of values: Ross v. New Brunswick School District No. 15, [1996] 1 S.C.R. 825, LaForest J. at pp. 856-858. One of the values sought to be transmitted is respect for and acceptance of all persons regardless of personal characteristics which may be the basis for discrimination under s. 15 of the *Charter*.

b) that, without a 5th year of professional development through a public university, there was a risk that TWU graduates might not be professionally prepared to foster what LaForest J. in Ross described as "principles of tolerance and impartiality", and to provide a supportive learning environment for all students.

Appellant's Record, Vol. 2, pp. 325 - 326

69. The College relies on Section 4 of the Teaching Profession Act which reads:

"4. It is the object of the college to establish, having regard to the public interest, standards for the education, professional responsibility and competence of its members, persons who hold certificates of qualification and applicants for membership and, consistent with that object, to encourage the professional interest of its members in those matters." (Emphasis added)

70. The College also relies on s. 21, which provides:

"21. Subject to this Act, the Council must govern and administer the affairs of the College and, without limiting that duty, the Council may do the following:

(i) approve, for certification purposes, the program of any established faculty of teacher education or school of teacher education." (Emphasis added)

71. The College also relies on s. 23(1), which provides:

"23.(1) The Council may make bylaws not inconsistent with this Act or the School Act

(d) respecting the training and qualifications of teachers and establishing standards, policies and procedures with respect to the training and qualifications including, but not limited to, professional, academic and specialist standards, policies and procedures,

(e) giving effect to and implementing the powers of Council set out in this Act."

72. Bylaws have been made by the Council pursuant to s. 23(1)(d) and (e), which provide for approval by the Council of teacher education programs (Appellant's Record Vol. 1, p. 82 *et seq*).

73. The Council enacted Bylaw 5 authorizing criteria and, pursuant to Bylaw 5, established the criteria governing teacher education programs. These fell entirely within s. 23(1)(d). The criteria established under Bylaw 5.C.02 are found in Policy P5.C.01[7] (Appellant's Record, Vol.

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[7] The College's policies include:

"Policies

P5.C.01

(b) Programs must meet the following criteria

1.0 Context

1.1 Have an appropriate institutional setting in terms of depth and breadth of personnel, research and other scholarly activity and commitment to teacher education.

2.0 Selection

2.0 Have defined selection and admission policy that recognizes the importance of academic standing, interest in working with young people and suitability for entrance into the profession of teaching.

3.0 Content

3.1 Have content which provides a base of knowledge of sufficient breadth and depth to prepare the candidate for an appropriate teaching assignment in the school system. This shall include:

(a) For standard certification, a minimum of 78 credit/semester hours with at least 18 credit/semester hours of course work at the senior level taken outside the Faculty of Education and related to the curriculum of British Columbia schools, or

(b) For professional certification, an acceptable degree as defined by P2.B.03, or ...

. . . .

"3.5 Have content which recognizes the diverse nature of our society and which addresses throughout the program philosophical, ethical and societal concerns with specific attention to the following areas:

1, p. 83 *et seq*). The policy criteria specify that a university's programs must take place in an "appropriate institutional setting", that its "selection and admission policy" should recognize "suitability for entrance into the profession of teaching", and that its programs must have content "which recognizes the diverse nature of our society". All of these criteria bear on a consideration the sectarian nature of TWU's program, and especially with regard to its attitude towards homosexuality.

74. TWU has argued below that the College has gone beyond its own standards as set out in its policies. But it must be obvious that, since the College's policy, in Criterion 1.1, which requires an "appropriate institutional setting" is qualified by the words "depth and breadth of personnel, research and other scholarly activity and commitment to teacher education", this bears precisely on the situation of faculty at TWU. As Rowles, J.A. said, at Appellant's Record, Vol. 3, p. 549 (para. 221): "It is undisputed that a gay or lesbian faculty member could not sign the Community Standards in good conscience." The contract expressly requires faculty "to affirm the application of the university's community standards to students". Appellant's Record, Vol. 1, p. 53.

75. Criterion 2.0 of the College's Policies says the program must have a "defined selection and admission policy that recognizes the importance of academic standing, interest in working with young people and suitability for entrance into the profession of teaching" [emphasis added]. This criterion comprehends the very issue of professional preparedness for teaching in the public schools with which the Council is concerned.

76. Criterion 3.5 requires "content which recognizes the diverse nature of our society ...". This raises in a quite specific way the need for a teacher education program to impart an understanding of the true nature and extent of diversity in Canada.

3.5.1 English as a Second Language (ESL)
3.5.2 First Nations Issues
3.5.3 Gender Equity
3.5.4 Multiculturalism and Racism
3.5.5 Students with Special Needs"

(Emphasis added) Appellant's Record, Vol. 1, pp. 84 - 87

77. In the case at bar, TWU's beliefs engaged a number of the College's criteria. Its mission, as an arm of the Free Church, is to develop "thoroughly Christian minds". Of course, the Free Church has its own particular theology, founded on the belief that every word of the Bible is divinely inspired. It is a theology by no means shared by other churches. Those other churches are struggling with the meaning of Christ's teaching and the teaching of the prophets in relation to homosexuality. Is it plausible to argue, as TWU does, that TWU's teachings regarding homosexuality could be ignored? If a teacher education program were proposed by a university which, on grounds of Biblical inspiration, sought to promote anti-Semitism, or that blacks should be segregated, or that Catholicism is a cult falsely called Christian, would the Council be obliged to ignore such teachings?

78. The College does not dispute the right of TWU to limit candidates for admission as students or hiring of faculty to those who willingly subscribe to the tenets of the Evangelical Free Church.

79. When the Council is asked, however, to give its *imprimatur* to TWU's teacher education program, the Council has to consider whether graduates of a private denominational institution of learning are professionally prepared to teach in the public schools. Will they be perceived as upholding Canadian values of tolerance and fairness? Will they in fact uphold those values? Will they be prepared to provide a supportive learning environment to all children including those of homosexual orientation?

80. Moreover, the Council, under s. 4 of the Act, in establishing standards for the education, professional responsibility and competence of teachers, is to have regard for the public interest.

81. Rowles J.A. held, at Reasons, Appellant's Record, Vol. 3, p. 539: (para. 197):

> "[197] The extent to which the College can concern itself with these issues is defined by the enabling legislation. The relevant sections of the Teaching Profession Act are ss. 4, 21 and 23. Section 4 gives the College jurisdiction to set standards for the education, professional responsibility and competence of its members. It is clear from the terms 'professional responsibility and competence of its members' that the College can consider the effect of public school teacher education programs on the competence and professional responsibility

of their graduates. On that view of the matter, the College does have jurisdiction over the requirements for graduation and it is open to the Council to concern itself with whether graduates from an applicant program will be perceived as upholding discriminatory-free values in the public classroom."

(Emphasis added)

82. Rowles, J.A. continued at paras. 199 - 200:

"I note that TWU expressly accepted the recommendations and findings of the Program Approval Team and Teacher Education Programs Committee, and the trial judge ordered them enforced. Those findings explicitly considered many aspects of TWU's program, including concerns about discriminatory admission policies, and the school's mission to teach within a "homogeneous worldview". If the Council had jurisdiction to endorse the Reports of the Program Approval Team, then the issues considered by it and the qualifications set for certification must also have been within the Council's jurisdiction.

The Program Approval Team report and recommendations were within the jurisdiction of the Council to endorse and enforce. The statutory mandate of the College under the Act gives the College a broad discretion to approve teacher education programs and to set standards for the programs themselves, as well as their graduates. Those standards must relate ultimately to the "education, professional responsibility and competence" of future public school teachers, but within that jurisdiction is a fairly broad discretion to consider what factors are relevant to these standards. The presence of discrimination is certainly relevant to any of those areas within the College's jurisdiction."

Reasons, Appellant's Record, Vol. 3, pp. 540 - 541

83. SFU's professional development program is the professional teacher education program for TWU students. A B.Ed. or other degree from TWU (or any other university) meets the degree requirements for a teacher education program, but the critical factor for teacher certification in B.C. is the assurance of professional competence that comes with the completion of professional teacher education.

84. This is a question to be weighed and considered by educators - by those on the Council of the College.

85. Rowles, J.A. put it this way:

"I have determined that the Council has jurisdiction to consider:

1) whether a teacher education program has discriminatory policies or practices;

2) whether the certification of a teacher education program would create either the perception that the public school system condones discriminatory values or does not uphold Canadian values;

3) whether the certification of a teacher education program which has discriminatory policies or practices would create a risk that graduates of the program would not provide a discrimination-free or less than supportive atmosphere for all students and their families."

Reasons, Appellant's Record, Vol. 3, p. 541, para. 201

86. Rowles J.A. held that, with the report of the Program Approval Team and the recommendations of the Teacher Education Programs Committee before it, the Council was entitled to come to its own conclusion regarding "the appropriate balancing of interests": Reasons, Appellant's Record, Vol. 3, p. 566, para. 250.

87. Based on a "pragmatic and functional analysis", the Council correctly interpreted the statute: Pushpanathan v. Canada [1998] 1 S.C.R. 982.

B. WAS THE DECISION OF THE COUNCIL PATENTLY UNREASONABLE?

1. Was there Evidence of Discriminatory Practices

88. To this point the Appellant has referred to homosexuality, homosexual persons and homosexual behaviour. But for purposes of determining whether the College was entitled to regard TWU's policies as discriminatory, they are one and the same thing.

89. TWU argued and Goldie, J.A. accepted that its Community Standards (to which students and faculty must subscribe) do not discriminate against homosexuals: Reasons, Appellant's Record, Vol. 3, p. 482. TWU said that the affidavits of Dr. Milne and Dr. Penner do not assert that the Bible "condemns homosexuality". TWU urged that all of the Biblical references it relies on are references to homosexual conduct, not homosexual orientation.

90. TWU says that "Community Standards do not require that members of the TWU community consider any person to be of less value or to be less worthy of dignity, respect and tolerance." (Response, to Leave Application, para. 22).

91. Moreover, TWU argued that in the proposed fifth year curriculum of TWU's teacher education program students "would be required to take courses dealing with social issues, including issues of discrimination and intolerance".

92. But this was a matter for the Council, not the Court, to decide. It is only if the Council's conclusion is patently unreasonable that the Court is entitled to intervene.

93. Rowles, J.A. captured the Appellant's argument, at Reasons, Appellant's Record, Vol. 3, p. 545 (para. 210).

> "The College also argues that the Community Standards Contract has to be understood in its context, not just as a set of rules of behaviour but as a reflection of the values upon which the Free Church and TWU is founded. In that regard, counsel for the College pointed out that the affidavit evidence indicates that the condemnation of homosexuality is deeply rooted in the faith of the Free Church, and its interpretation of the Bible. The Contract is a part of TWU's commitment to an education founded on the principles of the Free Church, and to the development of "thoroughly Christian minds".

94. The Free Church believes that every word in the Bible is divinely inspired. The Biblical references relied on go <u>further</u> than merely condemning homosexual conduct. The contract refers to, and Dr. Milne relied on 1 Corinthians 6:9,10 which states:

> "*Neither the sexually immoral nor idolaters nor adulterers nor male prostitutes nor homosexual offenders nor thieves nor the greedy nor drunkards nor slanderers will inherit the Kingdom of God.*"

95. This passage brings "homosexual offenders" (not simply homosexual behaviour) within Biblical condemnation. Dr. Milne, Dr. Penner and TWU may seek to interpret this passage in a benign way, but the words themselves constitute a condemnation of anyone who engages in homosexual practices.

96. Moreover, since under the contracts heterosexual behaviour is not prohibited, except outside marriage, whereas homosexual behaviour is absolutely prohibited, the case for discrimination is proved.

97. But the Court does not need to parse the Biblical passages cited by TWU or the contract itself.

98. It is now settled that homosexual behaviour and sexual orientation cannot be separated. Homosexual behaviour cannot be divorced from homosexual identity.

99. Rowles, J.A. wrote, at Reasons, Appellant's Record, Vol. 3, p. 555 (para. 228) that: "Human rights law states that certain practices cannot be separated from identity, such that condemnation of the practice is a condemnation of the person.". Rowles J.A. upheld the Council's position that the contracts incorporating Community Standards were calculated to turn away persons of homosexual orientation, and that this constituted a discriminatory practice. Rowles J.A. compared the case at bar to Vriend v. Alberta [1998] 1 S.C.R. 493. She found, at Reasons, Appellant's Record, Vol. 3, pp. 554 - 555, para. 226:

> "[226] .... In my respectful view, TWU's 'message' is much more explicit in terms of its condemnation than the one found to be discriminatory in Vriend. I conclude, therefore, that the 'message' sent by TWU's Community Standards Contract not only to gays and lesbians but also to every member of the TWU Community is discriminatory in a way that may be viewed as contrary to the public interest."

100. The Community Standards place homosexual behaviour in the same category as cheating, stealing, viewing of pornography and other behaviour that is undoubtedly a matter of free choice. But sexual orientation is not simply a behavioral choice. As Rowles, J.A. said, at Appellant's Record, Vol. 3, pp. 555 - 557 (paras. 228, 229 and 230):

> "Human rights jurisprudence accepts that homosexual behaviour is as central to the personal identity of gays and lesbians as religious practices are to the religious identity of the faithful. The unanimous decision of the Supreme Court, that sexual orientation is an analogous ground of discrimination, recognized the degree to which sexual orientation is a personal trait and not simply a behavioral choice. As La Forest J. stated in *Egan v. Canada*, supra, at 528:
>
> > ... I have no difficulty accepting the appellants' contention that whether or not sexual orientation is based on biological or physiological factors, which may be a matter of some controversy, it is a deeply personal characteristic that is either unchangeable or changeable only at unacceptable personal costs, and so falls within the ambit of s. 15 protection as being analogous to the enumerated grounds.
>
> Even if the Community Standards are understood only to condemn homosexual behaviour and not people, the condemnation is still a harmful one. It is an insidious type of harm because it requires people to deny, condemn, or conceal a part of their own identity. This type of harm was recognized in *Vriend*, supra, as one basis for the finding of discrimination:

> 102 Perhaps most important is the psychological harm which may ensue from this state of affairs. Fear of discrimination will logically lead to concealment of true identity and this must be harmful to personal confidence and self-esteem.
>
> (Emphasis added by Rowles, J.A.)

I should add that, in my respectful view, the argument of the Catholic Civil Rights League that *Charter* values require only tolerance of all people generally and not necessarily support for their conduct or behaviour depends on the acceptance of a distinction between homosexual behaviour and homosexual identity. While I agree that equality requires tolerance and not necessarily active support or encouragement, the kind of tolerance that is required is not so impoverished as to include a general acceptance of all people but condemnation of the traits of certain people. Although I think it is unnecessary to go further, I would add that the public interest in the public school system may also require something more than mere tolerance. As was stated in *Ross*, supra, public school teachers and those who administer and regulate the public school system may have a positive duty to ensure non-discrimination in our public schools."

101. Goldie J.A. held that there was no evidence that anyone had been denied admission to TWU because he or she refused to sign the contract, or had been expelled because of non-adherence to the standards of conduct expected under the contract: Reasons, Appellant's Record, Vol. 3, p. 480 (para. 55).

102. But Goldie, J.A. did not consider whether homosexual persons would effectively be turned away from TWU.

103. The contract that students must sign says that "students who cannot with integrity support those standards [set out in the contract] should seek a living-learning situation more acceptable to them". This provision was not referred to in the judgment of Goldie J.A. It means that a student or faculty member whose sexual orientation is not heterosexual must in good faith accept that homosexual behaviour is a sin, that it falls generally into the category of "dishonest or dishonourable practices such as cheating or stealing": The Biblical references in the contract, according to the evidence adduced by TWU, characterize it as behaviour that is unnatural, perverted and an abomination. No homosexual person could sign the contract in good faith.

104. Moreover, the contract signed by faculty requires them to affirm their belief in the values it expresses.

105. It is not a question of determining whether TWU, if it were subject to federal or provincial human rights law, would be guilty of discrimination. Rather the question is whether it was patently unreasonable for the Council to regard TWU's policy as discriminatory and to conclude that it may have "discriminatory ramifications" (to use Rowles, J.'a.'s phrase) owing to the requirement that faculty and students at TWU must sign the contract incorporating community standards.

2. The Issue of Perception

106. In the court below the Appellant argued that the attitudes towards homosexuality and homosexual persons exemplified by TWU's discriminatory practices raised two issues, one of perception, and another relating to risk.

107. Dealing with the issue of perception: in Ross v. New Brunswick School District No. 15 the Supreme Court held that the public schools should foster "principles of tolerance and impartiality". In Ross, La Forest, J., at para. 44, held that a teacher should be "perceived to uphold the values, beliefs and knowledge sought to be transmitted by the school system".

108. Our society encourages pluralism in views and values. No doubt the particular definition of Christianity adopted by the Evangelical Free Church obliges it to regard homosexual conduct as Biblically condemned. It may be that it has the right to establish a catalogue of sins, including homosexual practices, and effectively to deprive homosexual persons, indeed anyone who does not share the belief that homosexual behaviour is a sin, of the opportunity to study or teach at TWU. That is TWU's business.

109. The matter ceases to be altogether a private matter, however, and acquires a public dimension when TWU applies for approval by the College of Teachers, a public regulatory body, of its teacher education program.

110. May a public body, in particular, a body governing admission to a profession, in a secular society, consider *Charter* values and human rights values in deciding whether to extend a

public benefit to a private institution? The Court has indicated that the self-governing professions must be given a certain latitude: Pearlman v. Manitoba [1991] 2 S.C.R. 869.

111. Guidance can be obtained in U.S. law. There a similar issue arose in this form: private schools were established in the South which discriminated against blacks. In Green v. Connally 330 F. Supp. 1150 (1971), black parents of school children attending public schools in Mississippi brought a class action to enjoin the U.S. Treasury from according tax exempt status and allowing deductibility of contributions. The issue was one of the proper construction of the Internal Revenue Code. The U.S. District Court, District of Columbia, held that the Code should be interpreted so as to exclude such tax benefits for the schools. It was held that although parents had the undoubted right to have their children educated in a school of their choice, there was no right to government support for policies of racial discrimination among students.

112. Leventhal, Circuit Judge, confronted the argument in support of pluralism, that is, society's interest in fostering a wide variety of views and values. He said, at pp. 1162-1163:

> "The indulgence of individual whim of preference has value but like all principles it cannot be pushed beyond sound limits to extremes that cannot be approved. The individual philanthropist cannot be indulged in his own vagaries as to what is charitable; he must conform to some kind of norm, else he cannot obtain subsidy or tax exemption. Similarly, the general principle of a 'desire to benefit one's own kind' is an acceptable incentive to philanthropy as applied to a wide range of causes. But it takes on a different and unacceptable hue when it is manifested as racial discrimination. We are persuaded that there is a declared Federal public policy against support for racial discrimination in education which overrides any assertion of value in practicing private racial discrimination, whether ascribed to philosophical pluralism or divine inspiration for racial segregation."
>
> (Emphasis added)

113. The language in the last two sentences may be applied by analogy to the discriminatory policy of Trinity Western University with respect to homosexual persons. We have a declared federal and provincial policy against support for discrimination on the ground of sexual orientation. The College has the right, if not the obligation to recognize and uphold that policy when approving programs designed to prepare teachers for classrooms in the public school system.

114. According to Goldie J.A., a public body, in seeking to come to grips with the policies of a private university, may not apply *Charter* values or human rights values in determining the question of professional preparedness to teach in the public schools, for that would be to assume "a mandate" to interpret and apply the *Charter* (Goldie J.A., at Reasons, Appellant's Record, Vol. 3, p. 497 (para. 105). Such values, on this reasoning, may only be considered by a court or competent tribunal in a proceeding in which the *Charter* is invoked or in connection with a human rights complaint.

115. But the *Charter* and federal and provincial human rights statutes are high affirmations of Canadian values, solemn declarations by Parliament and the Legislatures of the bonds that give meaning to and strengthen our citizenship. A consideration of the values they embody certainly falls within the "public interest" under s. 4 of the Teaching Profession Act.

116. Suppose a university was founded on a belief, said to be Biblically-inspired, that promoted anti-Semitism? Would that be something which ought to be countenanced by the College in the name of pluralism and tolerance? Or suppose there was a Bob Jones University in B.C. promoting segregation of the races? Or a university which, on the strength of Biblical language, promoted hatred of the Pope and of the Roman Catholic Church? Would such an institution's proposed program of teacher education be entitled to approval by Council without any consideration of such a policy? Would the adoption of the motto, "hate the sin and love the sinner" suffice to render the whole subject immune from scrutiny?

117. It may be said that TWU's practices, even if opposed to the fundamental values of Canadian society, ought not to be weighed in the balance, that ignoring them is consistent with the idea of a healthy pluralism in education. This is, of course, an argument that would weigh on one side of the scale. But the Council, having regard to its mandate under s. 4, s. 21 and s. 23 of the Teaching Profession Act came down on the other side.

118. The Council's disposition still permits students to continue to complete their degrees at TWU, but requires them to complete their fifth year of professional teacher education through an approved program at a public university. This is now available for TWU students through the

current arrangements between TWU and SFU. If that arrangement were to be discontinued, students could still apply to complete their Professional Development year at any of the four post-secondary institutions in B.C. with approved teacher education programs.

119. These were matters properly taken into consideration by the Council and the Court should not substitute its opinion for the decision of the Council.

3. Measuring The Risk: No Evidence?

120. We have dealt with Canadian values and the issue of perception. Now we turn to professional preparedness and the issue of risk.

121. Is there a risk that graduates of a five-year TWU program, teaching in the public schools, will treat students of homosexual orientation or students struggling with their sexual identity in such a way as to discount their worth, their identity, to cause a loss of self-esteem? Will they be equipped to deal with students who are bullying students thought by their peers to be homosexual? Will they be able to offer comfort and support to the students who are the object of such bullying? Even if there are no students of homosexual orientation in the classroom, will the attitude of TWU graduates cause students (undoubtedly impressionable) to think of homosexuals in the same way as their teachers do? What of children in the classroom being raised by same-sex parents? Or who have homosexual siblings? What attitude will TWU graduates have to these family situations?

122. We know of the damage done in the Indian residential schools. Students were taught to reject their culture, their language, their parents, their very identity. What is the difference here? Teachers in the residential schools did not set out to do harm. They sought to "civilize" their students according to a set of values, a world view which necessarily denigrated the identity of their students, and led to immense damage. Here the Council is entitled to decide whether there is a risk which it should take into account with regard to TWU's attitude towards homosexuality.

123. Rowles, J.A. in discussing Ross wrote at Reasons, Appellant's Record, Vol. 3, p. 531 (paras. 176 and 177):

> "In light of the reasoning in *Ross*, supra, I think it is clear that fostering a discrimination-free environment is of fundamental importance within the public school system and sets a standard to which public school teachers must adhere. Governmental bodies that regulate the public school system have a positive duty to ensure that the learning environment is discrimination free. In *Ross*, within the context of a school board disciplining the teacher, La Forest J. adopted this statement: (at 861):
>
> > A school board has a duty to maintain a positive school environment for all persons served by it and must be ever vigilant of anything that might interfere with this duty.
>
> In that case, La Forest J. observed, at 861, that the School Board's "passivity signalled a silent condonation of, and support for the respondent's views".
>
> If that reasoning is applied in the present context, it appears to me that the Council, when asked to approve a teacher education program, would be obliged to consider whether the learning environment in the public schools might be affected by discriminatory policies or practices in a teacher education program."

124. If a tribunal acts without evidence the result may be patently unreasonable. But Goldie J.A.'s finding of no-evidence was only made possible because he asked himself the wrong question: He asked, was there evidence before the Council of intolerant behaviour by TWU graduates?

125. On the basis of that question he was able to say that there was no evidence to support the conclusion that TWU graduates would not be perceived as upholding secular values or that there was a risk that they might not be supportive of all students: Reasons, Appellant's Record, Vol. 3, p. 500 (paras. 111 - 112).

126. Goldie J.A., with respect, has misconceived the issue before the College. The Council found that TWU follows discriminatory practices. It decided that there should continue to be a 5th year of professional development through a public university. It did not purport to find that there had been intolerant behaviour by TWU graduates certified to teach in the public schools. That issue was not before it. In any event, all such TWU graduates had taken their 5th year of professional development at SFU, a measure designed to alleviate any risk of intolerant behaviour. The Council had a duty to assess the *risk*. Goldie J.A. did not address this point.

127. Goldie J.A. said, Reasons, Appellant's Record, Vol. 3, (para. 66):

> "[66] Under the Teaching Profession Act the Council functions in two capacities: first, as the governing body of the teaching profession setting standards and passing upon the fitness of an individual for admission to the profession and second, as a quasi judicial tribunal when required to sit in judgment on the competence or conduct of a member."

128. In focussing on the question whether there was evidence of past intolerance, Goldie J.A. confused two functions of the Council. In effect, he held that since the Council has a disciplinary function which permits it to deal with intolerant behaviour by teachers, it follows that the Council cannot consider at the stage of program approval the *risk* of intolerant behaviour or of a lack of professional preparedness to deal with issues of homosexuality in the school.

129. The self-government of the professions entails a consideration of suitability for entry into the profession and discipline and expulsion of those who have obtained entry to the profession. These are the two poles of professional self-government. Goldie J.A. has aggregated all powers of self-government around the exit pole.

130. TWU had no vested right to approval of its program. The decision whether to approve, under s. 21 of the Act, TWU's proposed 5-year teacher education program, was an administrative decision, a question of judgment, based on its own knowledge and experience, that the Council had to make: would graduates of a five-year TWU program be professionally prepared to teach in the public schools? Would it be wise to continue to require the 5th year, the year of Professional Development, at a public university? The Court of Appeal treated that issue on the same footing as if it had been a hearing into the question whether there was proof of intolerant behaviour by a teacher already admitted to the profession.

131. Goldie, J.A.'s approach undermines the Act. Suppose a new university required students and faculty to sign a contract expressing a belief that Jews represent the anti-Christ, or that blacks are an inferior race, or that the Catholic Church is a cult falsely claiming to be Christian, and suppose that university made it clear that any student who was not prepared to subscribe to such a doctrine should study elsewhere and that any faculty member hired would be expected to subscribe to such a belief. Would anyone suggest that the College had to approve a teacher education program at such a university, that it could not assess *the risk*, in light of what is expected of teachers in the

public schools, but must have specific evidence of intolerant behaviour by the graduates of such an institution?

132. Council's role under the Act on this footing would only be reactive.

133. The Council had before it TWU's Community Standards and the contracts that faculty and students have to sign. The Council had the reports of the Program Approval Committee and the Teacher Education Programs Committee. The Council had TWU's submission. These materials did constitute evidence: see Rowles J.A., Reasons, Appellant's Record, Vol. 3, p. 564 (para. 245), and her conclusion: Reasons, Appellant's Record, Vol. 3, p. 571 (para. 265).

134. Goldie J.A. said:

> "No one has suggested Simon Fraser's contribution was instrumental in removing the intolerance Council has professed to find,"
>
> Reasons, Appellant's Record, Vol. 3, p. 500, para. 111

135. This is altogether misconceived. The Council did not profess to find evidence of intolerant behaviour by TWU graduates. On Goldie J.A.'s reasoning, the College could not require a fifth year at a public university to ensure professional preparedness unless the Council was already in possession of evidence of intolerant behaviour by TWU graduates, all of whom, be it remembered, have already taken their fifth year through S.F.U.

136. Moreover, Goldie J.A. ignored the fact that the contract which must be signed by faculty at TWU, is signed on the basis that the contract reflects their own beliefs and that they are required to teach accordingly: Appellant's Record, Vol. 3, p. 554 (para. 226). As Rowles J.A. said, at Appellant's Record, Vol. 3, p. 571, para. 265:

> "In my opinion, the inadequacies in the program itself with respect to the requirement for all students and faculty to sign the Community Standards, and that faculty must actually endorse those standards as correct and agree to teach in accordance with the principles of the school, are sufficient to support the College's decision to deny certification."

137. Goldie J.A., by asking the wrong question, was able to find that the decision of the Council was patently unreasonable. Once the right question is put, i.e., was there evidence of

discriminatory practices at TWU which might have "discriminatory ramifications", it is obvious that the Council acted reasonably: Rowles, J.A., Reasons, Appellant's Record, Vol. 3, p. 565, para. 245.

138. The "patently unreasonable" test is "clearly a very strict test", as Cory, J. said in Canada (A.G.) v. Public Service Alliance [1993] 1 S.C.R. 941 at p. 963. Cory, J. said, at pp. 963 - 964, that "it must be shown that the impugned decision is irrational, that is, evidently not in accordance with reason".

139. Goldie, J.A. substituted the decision of the court for that of the Council. He required evidence of intolerant behaviour by graduates of the TWU/SFU program - a program intended among other things, to forestall such behaviour. He ignored vital provisions of the contract signed by students. He ignored the contract required of faculty. By this means he determined that the Council had no evidence before it.

140. It would be difficult to imagine a more complete usurpation by the courts of the functions of an administrative tribunal.

C. DID THE COURTS BELOW ERR IN GRANTING AN ORDER IN THE NATURE OF MANDAMUS REQUIRING THE COUNCIL TO APPROVE TRINITY WESTERN'S TEACHER EDUCATION PROGRAM?

141. Goldie J.A. upheld the order of Davies J. setting aside the decision of the Council, and directing the Council to approve TWU's application, subject to the eight conditions contained in the recommendation of the T.E.P.C.: Reasons, Appellant's Record, Vol. 3, pp. 502 - 504 (paras. 121 to 126).

142. Mandamus, strictly speaking, is not available except where a specific duty must be performed by operation of law, there being no discretion: Merck v. Apotex Inc., [1994] 1 F.C. 742 (F.C.A.) at p. 766 *et seq,* affirmed Apotex Inc. v. Merck, [1994] 3 S.C.R. 1100. The proper order would have been to remit the matter to be determined by the Council according to law: R. v. Kingston Justices (1902) 86 L.T. 589; Padfield v. The Queen [1968] A.C. 997, Lord Reid at p. 1034, Strange v. Macklin (1997), 134 D.L.R. (4th) 243 (N.B.C.A.).

143. The Court of Appeal, by issuing an order to the College to act in a specific way instead of simply to hear and determine according to law, obliterated the discretionary jurisdiction conferred on the College by the Legislature and hitherto recognized by the common law.

144. In its resolution dated May 17, 1996, the Council determined, inter alia, that the TWU application should be rejected "because it does not fully meet the criteria and because it is contrary to the public interest to approve a teacher education program offered by a private institution which appears to follow discriminatory practices that public institutions are, by law, not allowed to follow."

145. This was the effective decision of the Council. It was a decision founded on a consideration of the concerns reflected in the report of the Program Approval Team and the conditions that the TEPC recommended should be imposed if approval were granted. These concerns arose out of a consideration of the academic resources and qualifications of faculty at TWU as well as the sectarian nature of the TWU program. The Council obviously had a concern about a particular feature of TWU's sectarian program, i.e., the requirement that teachers and students, as a condition of employment or study at TWU, must sign the contracts incorporating the Community Standards.

146. Even if the Council exceeded its jurisdiction in considering what it regarded as TWU's discriminatory practices there can be no doubt that it was entitled to consider these matters, which fell squarely within the criteria.

147. The College's policies relating to approval of Teacher Education Programs include the following:

> "6. An institution which is dissatisfied with a decision regarding its proposal may, within 30 days of the decision, ask the Council of the College of Teachers to reconsider the decision."
>
> Appellant's Record, Vol. 1, p. 89

148. TWU sought reconsideration of the decision of May 17, 1996 in accordance with the College's Policies.

149. On reconsideration, the Council, by resolution dated June 29, 1996, did not reverse its decision; it held that "Council still believes the proposed program follows discriminatory practices which are contrary to the public interest and public policy...".

150. According to Goldie J.A., the issue of discriminatory practices was the sole issue which the Council dealt with in its resolution of June 29th, 1996. That is true. But then he held that the other concerns had "disappeared upon reconsideration": Reasons, Appellant's Record, Vol. 3, p. 478 (para. 48). He said that meeting the College's criteria appeared to be "no longer a live issue": Reasons, Appellant's Record, Vol. 3, p. 503, para. 122.

151. But Goldie J.A. ignored the fact that the decision of May 17th, 1996, was the effective decision of the Council. When the Council decided, on June 29th, 1996, that it would not reconsider its original decision, that meant the original decision remained in force. The question whether TWU's application "fully [met] the criteria" was still outstanding. See, in particular, the Acting Registrar's letter dated May 22nd, 1996: Appellant's Record, Vol. 2, pp. 290 - 292, explicating the Council's decision. On TWU's request for reconsideration, the Council dealt only with the issue of TWU's discriminatory practices, not the issues raised with respect to the criteria generally, issues which were still before the Council. The Court of Appeal should not have foreclosed consideration of these issues.

152. The issues raised by the TEPC in recommending conditions and the issues raised by the Acting Registrar in her letter to TWU reflect concerns generally regarding the criteria.

153. The TEPC's recommended conditions included several recommendations for monitoring and evaluation by the College: these were related to TWU's sectarian nature (which is prohibited by statute for public universities: University Act, R.S.B.C. 1996, c. 468, s. 66). These included annual monitoring to ensure there was an appropriate institutional setting, monitoring of TWU's admission policy to ensure applicants with a different world view would not be refused admission, College involvement in the selection of faculty associates from the public school system, an in depth evaluation by an external review team in the final year of interim approval, and College involvement in TWU's annual ongoing review.

154. It was for Council to consider these issues, and decide whether this degree of monitoring and evaluation was appropriate. Council's decision, as set out in the letter from the Acting Registrar focused upon these concerns. The proposed conditions requiring monitoring "raised doubts about the overall readiness of the program for approval". The ability and experience of faculty, and the requirement of commitment to a homogenous world view were also mentioned. This issue, and the issue of library resources, whether a program for grades K - 7 was suitable etc., bear on the issue whether, discriminatory practices apart, TWU's program should have been approved. Goldie, J.A. has removed these issues from the table.

155. If, therefore, the Council's consideration of TWU's "discriminatory practices" was indeed an improper consideration of an extraneous matter it is nevertheless necessary for the College to consider the outstanding issues relating to whether TWU's application meets the criteria. The issue of the sectarian nature of TWU's proposed program as well as academic resources and the qualifications of faculty and the extent to which the conditions recommended by the TEPC may be satisfactory still need to be considered by the Council.

156. The Council is a body of 20 persons. Just as an appellate court is entitled to dismiss an appeal on a single ground if that is sufficient to dispose of the matter, so also was the Council entitled to do the same. That does not mean that it must be taken to have ruled at the same time on all the other issues that were considered at first instance.

D. THE *CHARTER* ISSUES

157. Rowles J.A. was the only judge to deal with TWU's alternative argument, i.e., that the College had violated Donna Lindquist's *Charter* rights. Rowles, J.A. agreed with the Appellant's argument that there had been no violation of Donna Lindquist's *Charter* rights under s. 2. But she did find that, by refusing to approve the TWU program, the College had violated Donna Lindquist's equality rights under s. 15; however, she found this to be justified under s. 1 of the *Charter*.

1. Was there a Violation of Donna Lindquist's Rights Under s. 2?

a) Freedom of Religion

158. Rowles, J.A. disposed of the argument in one paragraph. She said, at Appellant's Record, Vol. 3, p. 572, para. 268:

> "Section 2(a) does not require government to facilitate the practice of religion, beyond refraining from restricting existing rights based on religious belief. Because certification of TWU's proposed five-year teacher education program is not an existing right, a limitation upon it could not engage s. 2(a) of the *Charter*. Support for that opinion may be found in the separate concurring opinions of Sopinka J. (Major J. concurring), L'Heureux-Dubé J. and McLachlin J. in *Adler v. Ontario* [1996] 3 S.C.R. 609, 140 D.L.R. (4th) 385."

b) Freedom of Expression

159. TWU's students, faculty and graduates, are free to express their belief in the literal truth of the Bible as they see it and to urge others to accept that belief.

160. Rowles, J.A. said, at Appellant's Record, Vol. 3, p. 572, para. 270:

> "Signing TWU's Community Standards Contract may well be an expressive activity protected by s. 2(b), but it does not follow that the consequences of the exercise of that expression are immune from consideration by the certifying body."

c) Freedom of Association

161. Freedom of association is an individual right, not a collective right. What is protected under s. 2(d) is the right of Donna Lindquist and her fellow students at TWU to study together, to proselytize together and to pray together.

162. But Donna Lindquist and her fellow students at TWU have no right, as an association, or in association, to insist that their beliefs can never be examined by any public body which must determine whether the teacher education program of the institution where they study qualifies them to teach in the public schools.

163. They have no such individual right, so they cannot claim it under the rubric of freedom of association. And see Rowles, J.A., Appellant's Record, Vol. 3, p. 573, para. 271:

NO citing of Freedom of Association case law in SCC!

"TWU submits that the Council, by its decision, placed a burden on Donna Lindquist on the basis of her association with TWU and other members of the TWU community. It has not been shown that TWU students would be prevented from doing something collectively that they had a right to do individually. Ms. Lindquist's freedom of association has not been infringed because no right to certification of the TWU program has been established."

2. **Was there a Violation of Donna Lindquist's Rights Under Section 15?**

164. Discrimination, according to McIntyre J. in Andrews v. Law Society (1989), 56 D.L.R. (4th) 1, consists in the imposition of a burden on an individual, a burden not imposed on others, by reason of the individual's possession of an enumerated or analogous s. 15 characteristic.

165. The burden here is imposed on every teacher seeking certification from the B.C. College of Teachers. All teacher education programs, and all teachers, are expected to serve the goals of the public school system and to provide a supportive environment for all students. So all graduates certified by the College are expected to have had adequate professional preparation.

166. In Adler v. Ontario [1996] 3 S.C.R. 609, Sopinka J. and Major J. rejected the s. 15 claim put forward by the parents. Sopinka J. said, at p. 448, para. 181:

> "[181] Here the Act does not appear to distinguish between the appellants and other groups on the basis of a particular characteristic common to the appellants. However, it is clear that their claim is dependent on such a finding. In my view, such an argument cannot be sustained. While it is true that the appellants feel compelled to send their children to private school because of a personal characteristic, namely their religion, and therefore are unable to benefit from publicly-funded schooling, I fail to see how this is an effect *arising from the statute*. The reason why the public school system is not acceptable to the appellants lies in its secular nature. This secular nature is itself mandated by s. 2(a) of the *Charter* as held by several courts in this country."

3. **If there was a Violation of Donna Lindquist's *Charter* rights, it was Justified Under Section 1**

167. Rowles, J.A., following the approach of McLachlin, J. (as she then was) in Adler, held that the Council's decision would have a *prima facie* discriminatory impact on TWU students on the basis of their religion: Appellant's Record, Vol. 3, pp. 575 - 576, para. 276. But Rowles, J.A. found any infringement to be justified under s. 1.

a) Compelling and Substantial Interest

168. The Appellant adopts the views of Rowles, J.A.: Appellant's Record, Vol. 3, p. 577, para. 280.

b) Rational Connection

169. The Appellant adopts the views of Rowles, J.A., Appellant's Record, Vol. 3, pp. 578 - 579, paras. 282 - 283.

c) Minimal Impairment

170. The Appellant adopts the views of Rowles, J.A., Appellant's Record, Vol. 3, p. 581, para. 287 and at pp. 583 - 585, paras. 291 - 295.

d) Proportionality

171. The Appellant adopts the views of Rowles, J.A., Appellant's record, Vol. 3, pp. 585 - 587, paras. 296 - 300.

NOTE: The Appellant may apply to file a Reply Factum, once the *Charter* arguments to be advanced by the Respondents, and by the interveners who have indicated they wish to advance *Charter* issues (should they be given leave to intervene) have been received.

PART IV

NATURE OF ORDER SOUGHT

The Appellant requests that the appeal be allowed and the judgments below be set aside, with costs to the Appellant on the same scales as ordered by the courts below.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Thos R. Berger

Thomas R. Berger, Q.C., Counsel for the Appellant

Vancouver, British Columbia
March 22, 2000

APPENDICES

Notice to Attorney General

16 (1) The Attorney General must be served with notice of an application for judicial review and notice of an appeal from a decision of the court with respect to the application.

(2) The Attorney General is entitled to be heard in person or by counsel at the hearing of the application or appeal.

Court may order record filed

17 On an application for judicial review of a decision made in the exercise or purported exercise of a statutory power of decision, the court may direct that the record of the proceeding, or any part of it, be filed in the court.

Informations in the nature of quo warranto

18 (1) Informations in the nature of quo warranto are abolished.

(2) If a person acts in an office in which the person is not entitled to act and an information in the nature of quo warranto would, but for subsection (1), have been available against the person the court may, under an application for judicial review, grant an injunction restraining the person from acting and may declare the office to be vacant.

(3) A proceeding for an injunction under this section may not be taken by a person who would not immediately before February 1, 1977, have been entitled to apply for an information in the nature of quo warranto.

Relationship between this Act and *Crown Proceeding Act*

19 This Act is subject to the *Crown Proceeding Act.*

References in other enactments

20 If reference is made in any other enactment to a proceeding referred to in section 2 or 18, the reference is deemed to be a reference to an application for judicial review.

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Interim order

10 On an application for judicial review, the court may make an interim order it considers appropriate until the final determination of the application.

No time limit for applications

11 An application for judicial review is not barred by passage of time unless

(a) an enactment otherwise provides, and

(b) the court considers that substantial prejudice or hardship will result to any other person affected by reason of delay.

No writ to issue

12 (1) No writ of mandamus, prohibition or certiorari may be issued.

(2) An application for relief in the nature of mandamus, prohibition or certiorari, must be treated as an application for judicial review under section 2.

Summary disposition of proceedings

13 (1) On the application of a party to a proceeding for a declaration or injunction, the court may direct that any issue about the exercise, refusal to exercise or proposed or purported exercise of a statutory power be disposed of summarily, as if it were an application for judicial review.

(2) Subsection (1) applies whether or not the proceeding for a declaration or injunction includes a claim for other relief.

Sufficiency of application

14 An application for judicial review is sufficient if it sets out the ground on which relief is sought and the nature of the relief sought, without specifying by which proceeding referred to in section 2 the claim would have been made before February 1, 1977.

Notice to decision maker and right to be a party

15 (1) For an application for judicial review in relation to the exercise, refusal to exercise, or proposed or purported exercise of a statutory power, the person who is authorized to exercise the power

(a) must be served with notice of the application and a copy of the petition, and

(b) may be a party to the application, at the person's option.

(2) If 2 or more persons, whether styled a board or commission or any other collective title, act together to exercise a statutory power, they are deemed for the purpose of subsection (1) to be one person under the collective title, and service, if required, is effectively made on any one of those persons.

Powers to direct tribunal to reconsider

5 (1) On an application for judicial review in relation to the exercise, refusal to exercise, or purported exercise of a statutory power of decision, the court may direct the tribunal whose act or omission is the subject matter of the application to reconsider and determine, either generally or in respect of a specified matter, the whole or any part of a matter to which the application relates.

(2) In giving a direction under subsection (1), the court must

(a) advise the tribunal of its reasons, and

(b) give it any directions that the court thinks appropriate for the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

Effect of direction

6 In reconsidering a matter referred back to it under section 5, the tribunal must have regard to the court's reasons for giving the direction and to the court's directions.

Power to set aside decision

7 If an applicant is entitled to a declaration that a decision made in the exercise of a statutory power of decision is unauthorized or otherwise invalid, the court may set aside the decision instead of making a declaration.

Power to refuse relief

8 (1) If, in a proceeding referred to in section 2, the court had, before February 1, 1977, a discretion to refuse to grant relief on any ground, the court has the same discretion to refuse to grant relief on the same ground.

(2) Despite subsection (1), the court may not refuse to grant relief in a proceeding referred to in section 2 on the ground that the relief should have been sought in another proceeding referred to in section 2.

Defects in form, technical irregularities

9 (1) On an application for judicial review of a statutory power of decision, the court may refuse relief if

(a) the sole ground for relief established is a defect in form or a technical irregularity, and

(b) the court finds that no substantial wrong or miscarriage of justice has occurred.

(2) If the decision has already been made, the court may make an order validating the decision despite the defect, to have effect from a time and on terms the court considers appropriate.

"statutory power of decision" means a power or right conferred by an enactment to make a decision deciding or prescribing

(a) the legal rights, powers, privileges, immunities, duties or liabilities of a person, or

(b) the eligibility of a person to receive, or to continue to receive, a benefit or licence, whether or not the person is legally entitled to it,

and includes the powers of the Provincial Court;

"statutory power" means a power or right conferred by an enactment

(a) to make a regulation, rule, bylaw or order,

(b) to exercise a statutory power of decision,

(c) to require a person to do or to refrain from doing an act or thing that, but for that requirement, the person would not be required by law to do or to refrain from doing,

(d) to do an act or thing that would, but for that power or right, be a breach of a legal right of any person, or

(e) to make an investigation or inquiry into a person's legal right, power, privilege, immunity, duty or liability;

"tribunal" means one or more persons, whether or not incorporated and however described, on whom a statutory power of decision is conferred.

Application for judicial review

2 (1) An application for judicial review is an originating application and must be brought by petition.

(2) On an application for judicial review, the court may grant any relief that the applicant would be entitled to in any one or more of the proceedings for:

(a) relief in the nature of mandamus, prohibition or certiorari;

(b) a declaration or injunction, or both, in relation to the exercise, refusal to exercise, or proposed or purported exercise, of a statutory power.

Error of law

3 The court's power to set aside a decision because of error of law on the face of the record on an application for relief in the nature of certiorari is extended so that it applies to an application for judicial review in relation to a decision made in the exercise of a statutory power of decision to the extent it is not limited or precluded by the enactment conferring the power of decision.

Existing provision limiting judicial review not affected

4 Subject to section 3, nothing in this Act permits a person to bring a proceeding referred to in section 2 if the person is otherwise limited or prohibited by law from bringing the proceeding.

JUDICIAL REVIEW PROCEDURE ACT

CHAPTER 241

Contents

Definitions

1 In this Act:

"application for judicial review" means an application under section 2;

"court" means the Supreme Court;

"decision" includes a determination or order;

"licence" includes a permit, certificate, approval, order, registration or similar form of permission required by law;

"record of the proceeding" includes the following:

(a) a document by which the proceeding is commenced;

(b) a notice of a hearing in the proceeding;

(c) an intermediate order made by the tribunal;

(d) a document produced in evidence at a hearing before the tribunal, subject to any limitation expressly imposed by any other enactment on the extent to which or the purpose for which a document may be used in evidence in a proceeding;

(e) a transcript, if any, of the oral evidence given at a hearing;

(f) the decision of the tribunal and any reasons given by it;

Teachers' assistants

18 (1) A board may employ persons other than teachers to assist teachers in carrying out their responsibilities and duties under this Act and the regulations.

(2) Persons employed under subsection (1) must work under the general supervision of a teacher or administrative officer.

Teacher and administrative officer qualifications

19 (1) Subject to subsection (2), a board must not employ a person as a teacher, administrative officer, superintendent of schools or assistant superintendent of schools unless that person

(a) is a member of the college and holds a certificate of qualification as a teacher, or

(b) holds a letter of permission to teach issued under section 25 (2) of the *Teaching Profession Act.*

(2) A board may employ a person who possesses qualifications approved by the board, but does not meet the requirements of subsection (1), if that person is

(a) employed for 20 or fewer consecutive teaching days and teaching a particular class or classes where no teacher holding a certificate of qualification is available, or

(b) instructing a general interest course that is not leading to school graduation.

Administrative officers

20 (1) A board may appoint a person as an administrative officer to perform the duties and have the powers set out in the regulations.

(2) An administrative officer is not an employee within the meaning of the *Labour Relations Code.*

(3) An administrative officer who is responsible for evaluating a teacher in a specialized assignment may

(a) consult with a resource person who has relevant specialized technical knowledge, and

(b) use information obtained from the consultation in the evaluation.

Offer of teaching position and seniority

21 (1) When a board of a school district

(a) does not intend to renew the contract of an administrative officer in the school district, or

(b) intends to dismiss an administrative officer other than for cause,

the board must offer the administrative officer a teaching position in the school district before the expiry of the contract or the effective date of the dismissal.

suspension or expulsion must not be exercised by the discipline committee without the consent of the respondent.

(5) The fact that a council member is a member of the discipline committee does not prevent the member from sitting as a council member on the consideration of a report of the discipline committee.

Ratification of bylaws

24 (1) The registrar of the college must file with the minister a copy of each bylaw made by the council, certified under the seal of the college, within 10 days after it is made.

(2) The Lieutenant Governor in Council may disallow a bylaw respecting the training, qualification or certification of teachers within 60 days after the filing of it under subsection (1).

(3) A bylaw comes into force 60 days after the filing of it under subsection (1) unless the Lieutenant Governor in Council disallows the bylaw.

Admission and certification of members and issue of letter of permission

25 (1) The college must not do any of the following:

(a) issue a certificate of qualification to a person unless the person has met the relevant standards established by bylaw under section 23;

(b) admit a person as a member unless the person

(i) meets the standards of qualifications and the standards of fitness established by bylaw under section 23, and

(ii) satisfies the council that the person is of good moral character and is otherwise fit and proper to be granted membership;

(c) if a person fails to authorize a criminal record check under the *Criminal Records Review Act* or an adjudicator under that Act has determined the person presents a risk of physical or sexual abuse to children and that determination has not been overturned by an appeal panel under that Act, admit the person as a member until the college has taken the failure or the determination into account.

(2) The council may

(a) issue a letter of permission to teach to a suitable person who is not a member and whose services in the opinion of the council are required for a special purpose and for a specified time, and

(b) place those conditions on the permission to teach that the council considers appropriate.

(2) The council may appoint deputy registrars who have all the powers and duties of the registrar under this Act unless the council otherwise directs.

Special meetings

18 The chair of the college or 5 council members may call a meeting of the council and must give the members appropriate notice of that meeting.

Expenses

19 A reasonable allowance to defray the expenses of a council member and any member of a committee appointed by the council incurred in attending meetings or on authorized business may be made and paid out of the funds of the college.

Service of documents

20 A document to be served on the college or on the council is sufficiently served if

(a) left at or mailed by registered mail to the principal office of the college, or

(b) served personally on the chair, registrar or a deputy registrar of the college.

General powers of the council

21 Subject to this Act, the council must govern and administer the affairs of the college and, without limiting that duty, the council may do the following:

(a) employ persons it considers necessary for the conduct and management of the business of the college, and assign duties to them;

(b) appoint an employee of the college as an evaluator with authority to evaluate and decide whether persons applying for a certificate of qualification or for membership in the college have complied with this Act and the bylaws of the college;

(c) delegate to a committee of the college the authority set out in paragraph (b), either in addition to or in substitution for one or more evaluators appointed under that paragraph;

(d) authorize the registrar to refer specific applications for certificates of qualification or for membership in the college to either

(i) an evaluator appointed under paragraph (b), or

(ii) a committee referred to in paragraph (c);

(e) appoint committees it considers necessary and delegate to those committees, with the limitations or conditions it considers appropriate, any powers or duties of the council, except those concerning

(i) fees payable by members, or

(ii) matters allocated to the discipline committee, qualifications committee or teacher education programs committee;

(f) take action and incur expense it considers necessary for the promotion protection, interest or welfare of the college;

(g) determine the wages and benefits of officers and employees of the college;

(h) establish and maintain a system of continuing teacher education;

(i) approve, for certification purposes, the program of any established faculty of teacher education or school of teacher education.

Former members

22 (1) Sections 23 (1) (c) and (n) and (3), 28 (4) and (5), 30 (2), 31, 32 (1), 33 to 37, 40 and 41 apply to former members who hold certificates of qualification as if they were members.

(2) For the purposes of determining whether a former member who does not hold a certificate of qualification has been guilty of professional misconduct or other conduct unbecoming a member of the college, sections 23 (1) (c) and (n) and (3) 28 (4) and (5), 30 (2), 32 (1), 33, 34 and 40 apply to that former member as if the former member was a member.

(3) If a former member who holds a certificate of qualification ceases to hold the certificate of qualification after a report or complaint is received or a preliminary investigation or inquiry is commenced under section 28 (4) or (5), subsection (2) applies for the purposes of completing action or taking further action respecting the matter.

(4) If a former member does not hold a certificate of qualification and an adverse determination respecting the former member is made under section 34 (b), the council, by a resolution passed by the votes of a majority of the council members present at a duly constituted meeting of the council, may

(a) reprimand the former member, or

(b) direct that, for a set or indeterminate period, the former member is barred from membership and may not be issued a certificate of qualification.

(5) If the council has given a reprimand or made a direction under subsection (4), the registrar must, unless otherwise directed by the council,

(a) notify each board in British Columbia,

(b) notify the minister, and

(c) record the reprimand or direction in the register of members.

Bylaws

23 (1) The council may make bylaws consistent with this Act and the *School Act* as follows:

(a) respecting the carrying out of the administration of the affairs of the college and the maintenance of its standards, including bylaws for the purpose of implementing section 25 (1);

AUTHORITIES