

IN THE SUPREME COURT OF CANADA

(On Appeal from the Court of Appeal for the Province of British Columbia)

B E T W E E N:

THE BRITISH COLUMBIA COLLEGE OF TEACHERS

**APPELLANT
(Respondent)**

- and -

TRINITY WESTERN UNIVERSITY and DONNA GAIL LINDQUIST

**RESPONDENTS
(Petitioners)**

- and -

**EGALE CANADA INC., THE CANADIAN CIVIL LIBERTIES ASSOCIATION, THE
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, THE SEVENTH-DAY
ADVENTIST CHURCH IN CANADA AND THE CHRISTIAN LEGAL FELLOWSHIP,
ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION, THE CANADIAN
CONFERENCE OF CATHOLIC BISHOPS**

Intervener

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INDEX

PART I: FACTS	1.
PART II: ISSUES	1.
PART III: ARGUMENT	2.
A. Overview of EGALE’s Argument	2.
1. The social, political and legal context for the appeal.....	3.
2. Vulnerability of Lesbian and Gay Youth	3.
B. Administrative Law	7.
1. Standard of review	7.
2. Jurisdiction of the College	7.
3. The Mission of Trinity Western University: A Reasonable Ground for Concern	9.
4. Loving the Sinner?	12.
C. No Violation of Lindquist’s or TWU’s <i>Charter</i> rights	14.
1. No Denial of Freedom of Religion	14.
2. No Denial of Freedom of Association.....	15.
3. No Denial of Freedom of Expression.....	15.
4. No Denial of Equality.....	16.
5. Section 1 Justification.....	16.
(a) Objective	16.
(b) Rational Connection	17.
(c) Minimal Impairment.....	18.
(d) Proportionality.....	19.
PART IV: ORDER SOUGHT	20.
PART V: TABLE OF AUTHORITIES	

PART I - STATEMENT OF FACTS

1. Equality for Gays and Lesbians Everywhere (“EGALE”) is a national organization committed
5 to advancing equality and justice for lesbians, gays and bisexuals in Canada. EGALE accepts the
Statement of Facts as set out in the Appellant’s Factum.

PART II - STATEMENT OF POINTS IN ISSUE

2. This appeal involves a decision of the Appellant, British Columbia College of Teachers (the
10 “College”) refusing to approve the proposed five-year teacher education program of the Respondent,
Trinity Western University (“TWU”). In deciding this appeal, EGALE submits that it is important to
bear in mind the impact of the determination.

3. If the Appeal is allowed, TWU and Donna Lindquist (“Lindquist”) will continue to have the
15 ability to hold their religious beliefs and practice their religion. Persons enrolling in TWU will still be
able to teach in the public school system by continuing with the status quo of completing an additional
year at Simon Fraser University (“SFU”), and thereby automatically qualifying for certification.
Alternatively, TWU students could complete the TWU 5-year program and apply to the College for
certification through individual applications for certification rather than by automatic certification.

20

4. By contrast, if the Appeal is dismissed, the College will have no ability to ensure that TWU
graduates are equipped to promote diversity in secular public schools and, in particular, to ensure a
safe educational environment for lesbian, gay and bisexual students. Moreover, the College will be
implicitly compelled to endorse the discriminatory mission statement of TWU.

5. EGALE submits that:
- a. the College had the jurisdiction to consider issues of discrimination as they relate to the public school system, including the vulnerability of lesbian, gay and bisexual youth, and the effects of discrimination in the public school system. This is necessary for the Council to fulfil its professional regulatory role in determining the qualification and discipline of teachers and the certification of teacher education programs;
 - b. the College in determining the public interest is within its jurisdiction to consider the principles enunciated in the *Charter* and human rights legislation in carrying out its mandate, as well as the relevant schools legislation. These laws collectively make it clear that it is public policy in British Columbia that discrimination against lesbians, gays and bisexuals is prohibited and that sincere religious or moral beliefs do not excuse discrimination in the public school system;
 - c. The College was entitled to take into account the discriminatory purpose and effect of TWU's Community Standards document, which excludes practising lesbian, gay and bisexual students and faculty, and declares that homosexuality is "condemned";
 - d. there is no infringement of the Respondent's *Charter* rights, and alternatively, any such infringement caused by the College's decision is saved under s. 1 of the *Charter*.

PART III – ARGUMENT

20 A. Overview of EGALE's Argument

6. The broader social context of this case requires an awareness that lesbians, gays and bisexuals have historically been forced to remain invisible, and have faced exclusion, discrimination and

violence. This is especially so for lesbian, gay and bisexual youth who are particularly vulnerable. The decision of the College recognizes this reality for lesbians, gays and bisexuals and seeks to ensure a climate of acceptance and respect in a secular public school system that is combating persistent and pervasive homophobia.

5

1. The social, political and legal context for the appeal

7. The College is mandated by its enabling legislation to consider the “public interest” in setting professional standards. In assessing the “public interest”, the College is entitled to take into account the need for teachers proposing to teach in the public education system to be trained and qualified to address a broad range of diversity issues. This requires consideration of the particular issues facing young lesbians, gays and bisexuals within the education system.

2. Vulnerability of Lesbian, Gay and Bisexual Youth

8. Lesbians, gays and bisexuals face discrimination in Canadian society in numerous aspects of their daily lives. This Honourable Court has recognized the significant societal disadvantage faced by lesbians, gays and bisexuals, and their families. This Honourable Court has also recognized the “public harassment and verbal abuse” faced by lesbians, gays and bisexuals, including the fact that lesbians, gays and bisexuals are often “victims of crimes of violence” because of sexual orientation and experience discrimination in employment and access to services.

20 *Egan v. Canada*, [1995] 2 S.C.R. 513 at 600-601 (“*Egan*”)
M v. H & Ontario, [1999] S.C.R. No. 23 (QL); (1999) 171 D.L.R. (4th) 577 (“*M v. H*”)
Vriend v. Alberta, [1998] 1 S.C.R. 493 (“*Vriend*”)

9. Courts have also recognized the “inexorable, cumulative effect” of systemic discrimination, based on “value assumptions that [are] ... hidden and unconscious.” Systemic discrimination results from a history of oppression which persists so long and is so extensive that it becomes institutionalised in the laws, customs, and prevailing attitudes of society.

5 *Egan, supra*, per L’Heureux-Dubé J. at 544
Public Service Alliance of Canada v. Treasury Board (1991), 14 C.H.R.R. D/341 at D/349 (C.H.R.T.)
P.S.A.C. v. Staff of the Non-Public Funds, Canadian Forces (1996), 27 C.H.R.R. D/488 (F.C.A.)

10 10. Many lesbians, gays and bisexuals, particularly youth, internalise the prevailing message that they are not normal and consequently suffer insecurity, depression, and shame:

15 As young people we were told that gays are to be avoided and gayness hidden because homosexuals are perverted, unhappy, disgusting and likely to molest heterosexuals. Sometimes it was said directly through queer jokes, verbal attacks and threats or reports of violence. Others of us heard more subtle comments ... bit by bit we began to accept what we were told. We absorbed anti-gay beliefs even before we knew that we were gay. It was often only with great difficulty that we could acknowledge our own gayness, for then these beliefs would apply to us.

20 *Goodman, Lakey, Lashof & Thorne, No Turning Back: Lesbian and Gay Liberation for the Eighties* (Philadelphia: New Society Publishers, 1983), at 23-24

11. In the educational context, the suppression of references to lesbians, gays and bisexuals creates a learning environment in which young people are raised unaware of the diversity of families in Canadian society, and where the contributions of lesbians, gays and bisexuals to Canadian history, art, literature, culture, family and social life are systemically ignored or devalued. Young people coming to terms with their sexual orientation may find themselves torn between risking rejection, discrimination and abuse by “coming out” as lesbian, gay or bisexual, or concealing their identity and feelings, leading to loneliness, alienation and shame:

30 The opposite of self disclosure, keeping this information entirely to oneself, is an affirmation of internalized homophobia, implying that this aspect of oneself is too shameful to disclose

to anyone.

[W]e've been taught that gays are not worth loving and respecting. ... It does not occur to us that we may be healthy and society may be sick.

Sophie, "Internalized Homophobia and Lesbian Identity" (1987), 14 Journal of Homosexuality 53, 60; Goodman, Lakey, Lashof & Thorne, supra, at 24

12. These messages of exclusion and "not belonging" are internalized by youth who may later grow up to identify as lesbian, gay or bisexual, and create problems such as a lack of self esteem, a high risk of parental rejection, peer abuse, homelessness, school dropout, drug abuse, unsafe sexual behaviour and prostitution. One of the most serious and tragic consequences of the lack of adequate social support is the disproportionately high rate of suicide and attempted suicide for young lesbians, gays and bisexuals, a factor recognized by the Supreme Court of Canada.

Egan, supra at 601

"The Experiences of Young Gay Men in the Age of HIV, Health Canada" (Ottawa, 1996) at 12-13, 19-20

13. A British Columbia study concluded that 46% of lesbian and gay youth have attempted suicide at least once, and that the average age of the first attempt at suicide is 13. The authors of another report have noted:

Cognitive, emotional and social isolation, ongoing external and internalized homophobia and lack of support may lead homosexually oriented adolescents to perceive suicide as their only means of escape.

Kroll & Warneke, "The Dynamics of Sexual Orientation and Adolescent Suicide" (Calgary, 1995) 1

Being Out. Lesbian, Gay, Bisexual & Transgendered Youth in B.C.: an Adolescent Health Survey, The McCreary Centre Society, 1999, at 6

14. Because lesbian, gay, and bisexual youth are almost always 'minorities' in their own families, they do not enter the school environment with the same level of family support and understanding that other members of minority groups do. Thus schools are an important second line of support for

students dealing with issues of sexuality, and can counter the effect of a hostile family environment. The risk of suicide and other social problems such as homelessness and unhealthy relationship patterns increase when youth have no sources of support or even tolerance.

5 Kathleen Lahey, *Are We 'Persons' Yet? Law and Sexuality in Canada* (Toronto: University of Toronto Press, 1999) at 197.

15 15. The impact of discrimination has been most noted in the educational context, especially for lesbian, gay and bisexual students. Isolation has been identified as “the most relentless feature in the
10 lives of most gay, lesbian and bisexual youth.” The environmental factors contributing to isolation have been found to include lack of services, homophobia and denial of human rights protections, lack of adult role models, hostile school environments, rejection by religious groups, neglect by child welfare agencies and lack of training and awareness. The attitudes contributing to these severe difficulties are a direct result of insufficient support within the public education system. As Professor
15 MacDougall notes:

The most important factor in the perpetuation of homophobia and the marginalization of homosexuals, including self-hatred in homosexuals is the intense indoctrination in heterosexism that children experience. A great deal of this indoctrination occurs in educational institutions.

20 *Silence in the classroom* (1998) 61 Sask. L. Rev. 41

See also: *Canadian Public Health Association, Safe Spaces* (August, 1998) at 5-8

25 *Isolated and Invisible: Gay, Lesbian, Bisexual and Transgendered Youth*. Report for the South Fraser Regional Health Board March 1998 at p.8, 12

16. Homophobia in schools also impacts students who are not gay, lesbian or bisexual. For example, those who are perceived to be lesbian, gay or bisexual, as well as children with lesbian, gay
30 or bisexual parents or family-members, may face equivalent harassment and violence.

Seattle Public Schools 1995 Teen Health Risk Survey. (1996) Nancy Peterfreund and Allen Cheadle for Seattle Public Schools.

17. The College and others have recognized this problem of systemic homophobia in the school
5 system, characterized at least by invisibility and at worst by actual violence. There is a “poisoned
atmosphere” in schools for lesbian, gay and bisexual youth, youth who are perceived to be lesbian,
gay or bisexual, and the children of lesbian, gay or bisexual parents. The College has recognized the
demonstrable harm caused by this systemic homophobia. Efforts to overcome systemic homophobia
require a strong professional commitment to equality, adequate training to ensure insight and
10 sensitivity, and active efforts to ensure a climate of acceptance and respect. In these circumstances,
it is not only reasonable, but necessary, that teachers in the secular public school system be trained
to address these systemic harms, and to sincerely, actively and effectively embrace the goals of
promoting diversity and acceptance.

15 **B. Administrative Law**

1. Standard of review

18. EGALE agrees with the reasons of Madam Justice Rowles that the decision of the College
with regard to the effects of any discriminatory practices on the public school system is subject to
review on a reasonableness standard.

20 *Trinity Western University v. British Columbia College of Teachers* (“*TWU v. College*”), reasons of Rowles J.A.,
at par. 153, *Appeal Record* Vol: III, p. 521

2. Jurisdiction of the College

19. EGALE submits that the College was not required, nor did it purport, to make a finding of
25 discrimination under either the *Charter* or the *Human Rights Code*. In exercising its administrative

discretion, it simply took account of the notorious disadvantage experienced by lesbian, gay and bisexual youth in the public school system, and the corresponding need for teacher education programs to foster principles of diversity and inclusiveness. It would be an absurd result if values which would otherwise be relevant to the exercise of an administrative discretion were exempt from consideration simply because these values are otherwise enshrined in the *Charter* or human rights legislation. On the contrary, EGALE submits that, in making a decision within its jurisdiction, the College was entitled, and even required, to consider the values underpinning s. 15 of the *Charter* and the *Human Rights Code*.

10 20. EGALE agrees with the statement of Madam Justice Rowles in which Her Ladyship stated:

[I]t 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.

15 *TWU v. College* at par. 177; *Appeal Record* Vol: III, p. 531

21. It is a legitimate consideration in the approval of a teacher education program whether that program contains or condones discriminatory practices or policies. In EGALE's submission, the importance of the role of teachers in inculcating principles of tolerance and inclusiveness in the public school system cannot be overstated. As noted by this Honourable Court in *Ross*:

25 The school is an arena for the exchange of ideas and must, therefore, be premised upon principles of tolerance and impartiality so that all persons within the school environment feel equally free to participate. Teachers are inextricably linked to the integrity of the school system. Teachers occupy positions of trust and confidence, and exert considerable influence over their students as a result of their positions. The conduct of a teacher bears directly upon the community's perception of the ability of the teacher to fulfil such a position of trust and influence, and upon the community's confidence in the public school system as a whole.

Ross v. New Brunswick, [1996] 1 S.C.R. 825 at 857

22. If the environment in which aspiring teachers are trained may cause harm to public school students, then the fact that such an environment reflects people's religious beliefs cannot prevent review of that environment and its effect on public school students. Such a review is not only permitted, it is required if the College is to take seriously its job of recognizing and addressing the needs of students in public schools.

3. The Mission of Trinity Western University: A Reasonable Ground for Concern

23. As outlined in the contextual section above, systemic homophobia is a notorious feature of the high school environment, in which many students are reluctant to divulge their sexual orientation. Thus, it may be expected that most students enrolling in TWU will have had no contact with openly lesbian, gay or bisexual persons.

24. These difficulties are compounded by the fact that TWU clearly attempts to create a homogenous community of believers through the creation and implementation of its Community Standards. This is a community that discourages openly lesbian, gay or bisexual students from attending their University. TWU encourages those who cannot in good conscience adhere to the Community Standards to go elsewhere. Thus, graduates of TWU are unlikely to gain any exposure to living and working with openly lesbian, gay or bisexual persons whether as students or teachers during their university years. Accordingly, it is very likely that TWU graduates would be dealing with the social reality of diverse sexuality for the first time when they entered the classroom as teachers. There is no evidence in the Record that, apart from the current year at SFU that they now wish to avoid, TWU has any current programs to prepare its graduates to address difficulties experienced by

lesbian, gay and bisexual students in a sensitive manner and to promote diversity in the public school system in accordance with the requirements of public policy.

Appeal Record Vol: III, pp. 505 – 507, and 511 - 513

- 5 25. Further, TWU’s “Community Standards” contract explicitly seeks to instill in students anti-gay and lesbian attitudes and beliefs which are antithetical to the values of the public education system. The Community Standards, including the condemnation of homosexual behaviour, are expressed to represent the “core values” of the University.

Appeal Record Vol: III, pp. 505 – 507, and 555 - 557

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26. The evidence also discloses that TWU’s aim is to inculcate these values in its students who are expected to bring these values into their lives, both personal and professional. TWU’s Community Standards are explicitly expressed to reflect “a clear mission” to “let nothing stand in the way” of developing “godly Christian leaders ... with thoroughly Christian minds” who will fulfill “the Great Commission, serving God and people in the various marketplaces of life.” In the face of this requirement, TWU now asserts that the College should not be entitled to question whether its graduates will eschew TWU’s mission in the classroom and embrace the acceptance of lesbians, gays and bisexuals in accordance with secular public policy. It is difficult to see how they could do so in good conscience, having subscribed to TWU’s mission statement.

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Appeal Record Vol: III, pp. 505 – 507, and 555 - 557

27. EGALE submits that the Council was entitled to take into account whether the condemnation of

homosexuality, as part of the core values that graduates of TWU were expected to carry into “the various marketplaces of life”, is inconsistent with the values of the public education system.

28. In EGALE’s respectful submission, the British Columbia Court of Appeal erred in asserting
5 that the College could not reach its decision without evidence of direct discrimination. The
Community Standards speak for themselves and supply sufficient cause for concern by the College.
In *Ross*, it was held that no actual proof of discrimination was required. Rather, it was sufficient that
Mr. Ross’ personal beliefs were inconsistent with the School Board’s goal of redressing a poisoned
environment.

10 *Ross, supra*

29. Moreover, this Honourable Court recognized in the *M v. H* case the detrimental impact upon
the dignity and self-worth of lesbians, gays and bisexuals as a result of pressures to remain invisible,
which contributes to the “erasure of [the] existence” of lesbians, gays and bisexuals. The impact of
15 TWU’s Community Standards contract cannot be measured solely by reference to external
manifestations of discrimination, but must also take into account the more insidious effects of
systemic discrimination and attitudes contributing to the invisibility and erasure of lesbian, gay and
bisexual self-identity.

M v. H, [1999] 2 S.C.R. 3 at 57-58

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30. The Respondent also seeks to defend its Community Standards document by asserting that
the document affirms the value of “total respect for all people”, including “making a habit of edifying
others, showing compassion, demonstrating unselfishness, and displaying patience.”

Respondents' factum, paras. 7, 59

31. With respect, young lesbians, gays and bisexuals do not need “edifying”, “compassion” or “patience”. They require affirmation and acceptance for who they are, as well as assistance in addressing systemic homophobia. It is unreasonable to expect that a lesbian, gay or bisexual student experiencing difficulties would feel comfortable turning to a TWU graduate with confidence that they would be assisted in a non-judgmental and supportive manner, particularly if that student were aware of the tenets of TWU condemning homosexuality.

10 **4. Loving the Sinner?**

32. TWU seeks to defend the clear denunciation of homosexuality in its mission and Community Standards document by drawing an artificial distinction between homosexual behaviour (which is condemned) and homosexual people (who are not).

15 33. In EGALÉ's submission, the suggestion that it is possible to “love the sinner but hate the sin” is impossible to maintain in a human rights context. Lesbian and gay identity and conduct are inextricably intertwined. Attempting to separate them is analogous to protecting religion but not religious practices, or affirming respect for francophones, so long as they do not speak French.

20 34. EGALÉ supports the position of Madam Justice Rowles:

[T]he 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.
TWU v. College at para. 230, *Appeal Book* Vol: III, p. 555

People cannot be so separated. Requiring someone not to act in accordance with their identity is harmful and cruel. It destroys the human spirit. Pressure to change their behaviour and deny their sexual identity has proved tremendously damaging to young persons seeking to come to terms with their sexual orientation. The approach to sexual orientation issues advanced by TWU directly
5 reinforces the legitimacy of the College's concerns.

35. This Honourable Court recognized in *Egan* that sexual orientation is a “deeply personal characteristic” and is central to the identity of lesbians, gays and bisexuals. This has also been recognized in this Honourable Court's decision in *Ward*. In that case, this Honourable Court included
10 persons fearing discrimination on the basis of sexual orientation within the category of “groups defined by an innate or unchangeable characteristic”.

Egan, supra at 528
Canada v. Ward, [1993] 2 S.C.R. 689 at 739

15 36. There is ample evidence of TWU's policy and practice of “hating the sin” - in ensuring that faculty are not practising homosexuals, in having a public mission statement that condemns homosexuality, in promoting the expectation that students will live by the mission statement and in discouraging openly lesbian, gay or bisexual students from attending their university. There is no evidence, however, of TWU “loving the sinner” - for example, through discouraging or working to
20 end the problems of the poisoned atmosphere of homophobia in schools.

37. The reasonableness of the College's decision is reinforced by the values underpinning the equality guarantees of the *Charter*, namely:

... to prevent the violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice, and to promote a society in which all persons enjoy equal recognition at law as human beings or as members of Canadian society, equally deserving of concern, respect and consideration.

Law v. Canada (Minister of Employment and Immigration), [1999] 1 S.C.R. 497 at 524 (“*Law*”)
M v. H, *supra* at 612
Vriend, *supra* at 535-536
Big M, *supra* at 344
Andrews, *supra* at 171
Turpin, *supra* at 1333

38. In EGALE’s submission, the College displayed an appropriate recognition that TWU’s condemnation of homosexuality is inconsistent with these fundamental Canadian values, as reflected in the supreme law of Canada.

C. No Violation of Lindquist’s or TWU’s *Charter* rights

39. TWU and Lindquist assert a violation of their *Charter* rights to freedom of religion, association, expression and equality. EGALE submits that these rights have not been violated but that any such violation is justified under s.1 of the *Charter*.

1. No Denial of Freedom of Religion

40. The foundation of the public school system in British Columbia is its purely secular nature. Under the *Charter* and human rights legislation, sincerely-held religious beliefs remain subject to scrutiny and regulation in the public sphere, as opposed to the context of private thought or worship.

School Act, 14 R.S.B.C. 1996, c.412, Preamble, s. 76
R. v. Big M Drug Mart Ltd., [1985] 1 S.C.R. 295 at 337
Brillinger v. Brockie, [2000] O.H.R.B.I.D. No. 3 at par. 31, 32, 48
Hudler v. London (City), [1997] O.H.R.B.I.D. No. 23 at par. 23, 72-74

41. The right to religious freedom cannot compel approval by a public body of a program which itself reinforces discriminatory values. The sphere in which actions and policies are protected by religious freedom is not unlimited. For example, one's religious beliefs do not immunize a person from being held accountable for criminal actions. Nor can they immunize TWU's teaching program
5 from critical review.

42. The U.S. Supreme Court has recognized that, while private religious universities may have lawful discriminatory beliefs and practices, they must accept restrictions on their ability to export those practices in an unfettered manner into the public sphere. Government may impose restrictions
10 on such institutions because of their discriminatory practices even if religiously founded.

See generally *Bob Jones University v. U.S.A.* 461 U.S. 574 (1983) (U.S.S.C.)

2. No Denial of Freedom of Association

15 43. The College's decision does not preclude students from associating freely with each other. On the contrary, it is the mission and community standards contract of TWU which undermines the right to freedom of association by encouraging students who are lesbian, gay or bisexual to pursue their studies elsewhere.

3. No Denial of Freedom of Expression

44. In EGALE's submission, the Council appropriately recognized that a school and university environment flourishes when students are encouraged to question, critique and decide for themselves which ideas they will accept or reject. Although TWU professes a commitment to academic freedom,
25 it in fact requires that students commit to a "homogeneous world-view", and stifles freedom of

expression by discouraging the participation of students who do not subscribe to the contents of the Community Standards document.

4. No Denial of Equality

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45. There is no evidence that the College has drawn a distinction between the Respondents and others based on their religion. It is not asserted that the College would have differentiated between a secular training program that condemned homosexuality and a religious training program that condemned homosexuality. It is the condemnation of homosexuality which appropriately caused the
10 College concern, not whether that condemnation was based on religious grounds.

46. Contrary to the assertions of the Respondents, the College's decision was not based on stereotyping, but on the explicit terms of TWU's own mission and statement of principles, which on their face advance discriminatory values.

15

5. Section 1 Justification

47. It is submitted that any infringement of the Respondents' *Charter* rights is justifiable under s.1.

20 (a) Objective

48. The College appropriately sought to advance the objective of ensuring that teacher training programs foster values of pluralism and acceptance of diversity, so that teachers are equipped to address the harms routinely experienced by lesbian, gay and bisexual youth in the public education system in a sensitive and non-judgmental way.

49. This objective is wholly consistent with the principles and values of a “free and democratic society”, which include respect for human dignity, enhancing diversity and the accommodation of a wide variety of beliefs.

5 *Big M, supra* at 336, 352
Andrews, supra at 171

(b) Rational Connection

50. In EGALE’s submission, the College’s concern to ensure that TWU graduates are not wholly
10 insulated from lesbian, gay and bisexual peers and faculty prior to assuming a position of responsibility in the public education system is rationally connected to the objective.

51. Requiring TWU students to attend a public university for a year is likely to bring them into contact with lesbians, gays and bisexuals, broaden their perspective, or at least affect their perception
15 of the public acceptability of anti-gay bias. Aside from any impact of the public university program itself, the knowledge that such attendance is required to ensure a gay-positive environment in public schools lets the teaching candidate know that anti-gay bias is not permissible in the public school environment.

20 52. It would be difficult, in EGALE’s submission, for a graduate of TWU’s 5-year teacher education program to sincerely embrace positive views of lesbians, gays and bisexuals if they have been required by the policies of their education program to put the opposite belief into practice during

their teacher training. The College's decision seeks to minimize the potential discriminatory impact of that training program.

5 **(c) Minimal Impairment**

53. EGALE recognizes that the within appeal involves the balancing of competing interests in society. EGALE agrees with the reasoning of Madam Justice Rowles that the decision of the College meets the minimal impairment test.

TWU v. College at par. 287-295, *Appeal Book* Vol: III, pp. 581-585

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54. Lindquist's religious beliefs are minimally impaired by the College's actions. She has a number of options in pursuing her teaching career:

- attend another teacher education program, since there is no bar to her attending those schools and practicing her Christian religion;
- attend TWU, complete the additional work at SFU and automatically qualify to teach in public schools;
- attend TWU, apply for certification and be subject to individual assessment;
- attend TWU and teach in a Christian school.

15

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55. There is only minimal impairment of TWU's rights. The impact of the College's decision was merely to maintain the status quo, enabling the college to continue to offer its teacher training program with a final year at SFU. This is a minimal intrusion, compared with the enormous challenge faced by the College of eliminating homophobia in schools.

25

(d) Proportionality

56. In weighing the salutary effects of the College's decision against its adverse impact, it is essential to keep in mind the severity of the consequences of the anti-gay and lesbian attitudes endemic in the school system. Through the systemic failure of teachers and others within the school system to address lesbian, gay and bisexual issues in an affirming and sensitive way, the isolation of lesbian, gay and bisexual youth is reinforced from an early age. These youth are subject to derogatory comments, harassment and physical assault or gay-bashings. The self-esteem of students coming to terms with their lesbian, gay or bisexual identities is systematically eroded, resulting in increased rates of school drop-out, drug abuse and youth suicide.

57. The College is rightly concerned to ensure that graduates from teaching programs be part of the solution, not part of the problem. The mere fact of certification of TWU's program would send a message to teachers, to students, to lesbian, gay and bisexual persons, and to all of society. That message is that intolerance of lesbians, gays and bisexuals is acceptable in the public sphere. The College rightly decided not to lend itself to the communication of that message. One year spent completing studies in a public university is a small burden when weighed against the efforts of the College to foster a pluralistic and accepting public education system.

PART IV - NATURE OF THE ORDER SOUGHT

58. EGALE respectfully requests an Order setting aside the judgments below and an Order granting the Appellant's appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Date: 13 July 2000

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