

IN THE SUPREME COURT OF CANADA  
(On Appeal from the Court of Appeal for British Columbia)

BETWEEN:

THE BRITISH COLUMBIA COLLEGE OF TEACHERS

APPELLANT  
(RESPONDENT)

AND:

TRINITY WESTERN UNIVERSITY and  
DONNA GAIL LINDQUIST

RESPONDENTS  
(PETITIONERS)

AND:

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

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### INTRODUCTION

*“It would seem strange, indeed, to permit the government to justify a discriminatory distinction on the basis of presumptions which are, themselves, discriminatory”*

*Egan v. Canada*, [1995] 2 S.C.R. 513 at 569 per Madam Justice L’Heureux-Dubé.

10 On June 29, 1996, the British Columbia College of Teachers (the “BCCT”) denied the application of Trinity Western University (“TWU”) for certification of its teacher education program without evidence and in a manner that exceeded its jurisdiction. The BCCT discriminated against TWU and the members of its community. It has attempted to justify its decision on the basis of stereotypical presumptions concerning TWU, the members of its community and its graduates.

### PART I - STATEMENT OF FACTS

1. The Respondents, TWU and Donna Gail Lindquist (“Donna Lindquist”), say that the facts set out in the Appellant's Factum in paragraphs 6, 9, 10, 14, 15, 16, 17, 26, 32, 34, 35 and 36, contain misstatements of the evidence or are incomplete. The Respondents rely on the findings of fact contained in the Reasons for Judgment of Mr. Justice Davies in the Supreme Court of British Columbia as restated by Mr. Justice Goldie in the Court of Appeal and the facts set out below.

#### Trinity Western University

20 2. TWU, founded in 1962, is a liberal arts university located in Langley, British Columbia, and is a fully accredited member of the Association of Universities and Colleges of Canada (“AUCC”), the association of degree granting institutions in Canada. TWU was approved for membership on March 8, 1984 at a meeting attended by 42 Canadian University presidents. Like all other AUCC members TWU gives, and receives, transfer credit for all first and second year course work done at

an AUCC member university. (Appellant's Record ("A.R."), Vol. I, pp.31, 108-110; Vol. II, pp. 211 and 301)

3. In 1969, the Legislature of British Columbia enacted the *Trinity Junior College Act*, S.B.C. 1969, c.44, which mandated that TWU shall provide university education with "an underlying philosophy and viewpoint that is Christian." In 1972, 1977, 1979 and 1985, the Legislature of British Columbia reviewed and amended this legislation; however, it has not altered TWU's statutory mandate.

4. Contrary to paragraphs 9 and 10 of the Appellant's Factum, TWU serves the Christian community as a whole while maintaining ties with the Evangelical Free Church ("EFC"). TWU is  
10 "an arm" of the Christian community at large. (A.R., Vol. I, pp. 31 and 131; Vol. II, p. 351)

5. TWU currently has an enrolment of approximately 2,500 undergraduate and graduate students. TWU employs approximately 350 faculty and additional support staff. At least 75% of tenured or tenure track faculty hold earned doctorates from recognized universities. It offers undergraduate degrees with twenty-seven majors and twenty-nine minors. TWU confers undergraduate degrees (Bachelor of Arts, Business Administration, Education, Science and Science in Nursing) which are universally accepted for admission into graduate programs at recognized Canadian universities. It also offers graduate programs in Arts in Counseling (Psychology), Religious Studies and Theology. (A.R., Vol. I, pp. 31, 108 and 131; Vol. II, p. 358)

6. In accordance with its statutory mandate, TWU offers students accredited university  
20 education within a distinctive Christian worldview which is reflected in the core values and behavioural standards set out in the Community Standards documents (the "Community Standards"). While TWU is oriented towards those who profess the Christian faith, it welcomes anyone who is willing to abide by the Community Standards while attending TWU. (A.R., Vol. I, pp. 51-53 and 55-56; Vol. II, pp. 214-216 and 358-359)

7. Paragraphs 11 and 12 of the Appellant's Factum are misleading. The Community Standards must be taken as a whole and include the following expectations of members in the TWU community:

OBEY JESUS' COMMANDMENT TO HIS DISCIPLES (Jn. 13:34-35) ECHOED BY THE APOSTLE PAUL (Rom. 14:1; Cor. 8,13) TO LOVE, CHERISH AND SERVE THE NEEDS OF ONE ANOTHER. This command requires total respect for all people regardless of race, gender, location, status, or stage of life and of course, precludes harming another person physically or maligning another's character through gossip, slander, or careless talk. It also includes making a habit of edifying others, showing compassion, demonstrating unselfishness, and displaying patience. (A.R., Vol. I, pp. 52 and 56)

8. In reply to paragraphs 14 to 18 of the Appellant's Factum, the Reverend Dr. Bruce Milne is not a theologian of the Evangelical Free Church. He has a Doctor of Philosophy degree from the University of Edinburgh, is the Senior Minister at the First Baptist Church in Vancouver and has written numerous books and academic articles. Dr. Milne gave evidence with respect to the Biblical requirement proscribing homosexual practice:

... [it is] representative of a majority of evangelical Christians both in Canada and around the world and represents a position that has been held to be the essential Christian position in respect of homosexual practice in all previous periods of the Christian Church.

...  
The Bible is very clear that while Christians must not condone or participate in homosexual behaviour, they must *maintain an environment of love, understanding and acceptance of all people, including those in the homosexual community. Fear, prejudice, discrimination and hatred are also Biblically condemned.* (emphasis added) (A.R., Vol. II, pp. 361-365)

### Donna Lindquist

9. Donna Lindquist was a twenty-year-old education student in her third year at TWU at the time of filing of the Petition. Donna Lindquist is a Christian, was baptized in her faith in 1986, and has attended the same Baptist church all her life. She attended TWU because it is a Christian university. She wishes to teach in public school classrooms. (A.R., Vol. I, pp. 25-27)

### TWU Education Program

10. Since 1985, TWU has conferred Education Degrees on its graduates through a joint program between TWU and Simon Fraser University ("SFU"). Approximately 70% of these education graduates have obtained teaching positions in public schools. (A.R., Vol. I, p. 32; Vol. II, p. 302)

11. TWU's Bachelor of Education degrees require a minimum of 157 semester hours of course credit, encompassing five years of study. The final 38 semester hours of course work are currently



completed through the SFU Professional Development Program (“PDP”). Since 1989, however, 30 of these 38 semester hours can be taken on the TWU campus through a module of the SFU program. (A.R., Vol. I, pp. 32-33)

12. The joint SFU/TWU program is dependent on the cooperation of SFU. Future cooperation is by no means assured. There is no guarantee that SFU will continue this current arrangement. The BCCT has no control over this arrangement. Moreover, qualified TWU education students cannot always gain access to the SFU program because of enrolment restrictions. (A.R., Vol. I, p. 133 and Reasons, A.R., Vol. III, p. 584)

10 13. A graduate from an approved teacher education program receives automatic certification by the BCCT as a public school teacher. (A.R., Vol. II, p. 237; Reasons, A.R., Vol. III, pp. 414 and 575)

14. The BCCT did not have before it on May 17, 1996, June 14, 1996 or June 29, 1996, nor has it subsequently produced, any evidence that courses taken at SFU might change the worldview or religious beliefs of TWU graduates or be “instrumental in removing the intolerance [the BCCT] professed to find.” (Reasons, A.R., Vol. III, p. 500)

#### **Application By TWU**

20 15. Contrary to paragraph 26 of the Appellant’s Factum, TWU originally applied to the Ministry of Education for, and was granted, formal recognition of its teacher education program in 1987. The application to the BCCT was initially made in 1988. However, the BCCT advised TWU in June, 1988 that it was still determining the criteria to be used for approving teacher education programs and the time line for reviewing TWU’s application was unknown. Given this uncertainty, TWU withdrew its application for a period of five years and undertook the interim cooperative venture with SFU to have a module of the SFU PDP on the TWU campus in order to provide the BCCT with time to develop its criteria. (A.R., Vol. I, pp. 31, 32, 77-81, 90-91, 108-109, 111-113, 117-118)

16. TWU was the first applicant for a new teacher education program and when developing the criteria, the BCCT was fully aware of TWU’s pending application. The criteria were finally forwarded to TWU by the BCCT on November 29, 1994 and on January 14, 1995 TWU delivered

a proposal revising and resubmitting its application for its teacher education program. (A.R., Vol. I, p. 119-193)

17. After an initial review by the BCCT's Program Approval Sub Committee, TWU's application was reviewed and approval recommended by two additional BCCT committees: a Program Approval Team ("PAT") and the Teacher Education Programs Committee ("TEPC"). The TEPC was comprised of 12 members of the Council of the BCCT. Eight of these twelve members supported the TEPC recommendation for approval May 15, 1996. On May 17, 1996, the overall Council initially rejected TWU's application by a vote of 16 to 2. At least six Council members must have changed their vote within a 48-hour period. (A.R., Vol. II, pp. 218-219, 221-222, 224-226, 232-259, 263-288)

18. In addition to the excerpts of the PAT report to the TEPC set out in the Appellant's Factum, the PAT concluded:

B.C. has many teachers who have had their initial teacher training and teacher experience elsewhere in church operated schools in which faith and discipline were integrated. They qualify for a B.C. certificate of qualification provided that academic and professional requirements are met. Different standards should not be established for persons whose initial teacher education is in B.C. (A.R., Vol. II, p. 238)

19. Contrary to the PAT's conclusions, the Registrar of the BCCT wrote in her June 28, 1996 letter:

In particular, in connection with the seven points referred to in my letter, it was apparent that the College was concerned about the bearing that the belief systems of graduates might have on the ability of graduates to teach in the public school system. (A.R., Vol. II, p.316)

20. The TEPC recommended approval of TWU's teacher education program subject to certain conditions. On May 16, 1996 the BCCT initially denied approval citing "discriminatory practices" at TWU and that TWU's program did "not fully meet the criteria". The BCCT's final decision in its motion of June 29, 1996 denying TWU's appeal, made no mention of other criteria. The only remaining issue was the BCCT's statement that "the proposed program follows discriminatory practices which are contrary to the public interest and public policy." (A.R., Vol. II, pp. 286 and 320; Reasons, A.R., Vol. III, pp. 478 and 503)

21. The BCCT's decision of June 29, 1996 concerning "discriminatory practices" and "public policy and the public interest" was explained by the BCCT in the Fall, 1996 Report to Members. Specifically, in defining "public policy and the public interest", the BCCT stated its disagreement with TWU's religious belief concerning homosexual behaviour:

Therefore in reviewing a program application, the College must consider whether the institution offering the program discriminates against persons entitled to protection according to the fundamental values of our society.

...

10

Labelling homosexual behaviour as sinful has the effect of excluding persons whose sexual orientation is gay or lesbian. . . . Persons of homosexual orientation, like persons of colour, are entitled to protection and freedom from discrimination under the law. (A.R., Vol. II, pp. 325-326)

22. In the B.C. Supreme Court, Mr. Justice Davies found that the decision of the BCCT was without any reasonable foundation:

It is apparent that the Council failed to consider the evidence which was before it, for had it done so it could not have reached the decision it did. Therefore, I find the decision to have been made without any reasonable foundation and must therefore be quashed. (Reasons, A.R., Vol. III, p. 453)

20

Mr. Justice Davies ordered the BCCT to approve TWU's teacher education program. (Reasons, A.R., Vol. III, p. 454)

23. The majority of the Court of Appeal, in a decision written by Mr. Justice Goldie, held that the BCCT's decision was in excess of its jurisdiction and was patently unreasonable and stated:

In the case at bar, the BCCT ignored the conditions in the recommendation of TEPC which were intended to prevent the feared situation from arising. It assumed without proof that intolerant behaviour by a teacher, professionally trained solely at TWU, would occur. It ignored past experience which appeared to rebut that assumption. Of TWU's graduates under the present program a substantial number teach in the public school system. *There is not one bit of evidence* that any one of them has behaved in the classroom in a manner incompatible with the standards of the Canadian community. (emphasis added)

30

As such, the Court of Appeal dismissed the BCCT's appeal and the Order of Mr. Justice Davies, directing the BCCT to approve TWU's teacher education program, was sustained. (Reasons, A.R., Vol. III, pp. 490-491, 499, 502-504)

## PART II - ISSUES

### I. APPLICABLE STANDARD OF REVIEW IS CORRECTNESS

- A. Standard of Review for Jurisdictional Errors
- B. Standard of Review for all Other Errors

### II. ERRORS MADE BY THE BCCT

- A. Deciding Issues Outside its Statutory Mandate
- B. Charter and Human Rights "Values"
  - (i) Breach of "Values" Not a Rationale for Denial
  - (ii) Proper "Values" Analysis
  - (iii) Fundamentals of Human Rights "Values"
- C. Statutory Objects of TWU - Public Interest
- D. Perception: Discrimination by the BCCT
  - (i) Perception of TWU Graduates
  - (ii) Perception of Approval of TWU's Application
- E. Risk: No Evidence

10

### III. BREACHES OF THE CHARTER RIGHTS OF TWU AND DONNA LINDQUIST

- A. Section 2(a) - Freedom of Conscience and Religion
- B. Section 2(b) - Freedom of Expression
- C. Section 2(d) - Freedom of Association
- D. Section 15(1) - Equality Rights
- E. No Justification Under Section 1

20

### IV. APPROVAL OF TWU'S TEACHER EDUCATION PROGRAM

### PART III - ARGUMENT

#### I. APPLICABLE STANDARD OF REVIEW IS CORRECTNESS

##### A. STANDARD OF REVIEW FOR JURISDICTIONAL ERRORS

24. In undertaking a review of the BCCT's decision, the Court must first determine the appropriate standard of review. In determining the extent of its jurisdiction and in interpreting its constituting legislation, the decision of the BCCT will be reviewed on a *correctness* standard (BCCT's Factum, para. 44; see also *Canada (Attorney-General) v. Mossop*, [1993] 1 S.C.R. 554 at 583-584 and *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 at 590-591).

##### 10 B. STANDARD OF REVIEW FOR ALL OTHER ERRORS

25. With respect to the standard of review applicable to all other errors, the central question is the intent of the legislature in conferring jurisdiction (*Pezim, supra* at 589). The BCCT has highlighted its purpose in making the June 29, 1996 decision as the "protection of minorities" (BCCT's Factum, paras. 48-67). Assuming that the BCCT had the jurisdiction to make its decision on this basis, the Court must ask: was the issue of the protection of minorities one that was intended to be left to the exclusive jurisdiction of the BCCT? (*Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982 at 1004). Given the Legislature's conferral of such jurisdiction on other bodies under the *Human Rights Act*, R.S.B.C. 1979, c.185.5 (now the *Human Rights Code*, R.S.B.C., 1996, c.210), this question must be answered in the negative.

20 26. In *Pezim, supra*. at 590, this Court described a spectrum for determining the appropriate standard of review for tribunal decisions. Of particular importance in determining the level of deference owed to a tribunal is the expertise of its members. Assessing this expertise assists the Court in determining the legislature's purpose in creating the tribunal (*Canada v. Southam Inc.*, [1997] 1 S.C.R. 748 at 773). That expertise is to be analyzed in relation to that of the Court vis-a-vis the particular issue before the tribunal (*Pushpanathan, supra* at 1007). The BCCT's decision was based on its conception of discrimination and, as such, requires knowledge of human rights and *Charter* law.

27. The Council of the BCCT is predominantly comprised of school teachers and, relative to the Courts, has no expertise in human rights issues. Human rights analyses involve the balancing of competing interests in society, which the Courts are more qualified to perform than inferior tribunals. (*Mossop, supra* at 585; *Gould v. Yukon Order of Pioneers*, [1995] 1 S.C.R. 571 at 599-600)

28. In the cases already cited, this Court has indicated that the decisions of human rights tribunals are generally entitled to less deference than specialized tribunals (eg. securities tribunals - *Pezim*). The BCCT has no expertise in matters relating to human rights and is entitled to even less deference than that afforded to human rights tribunals. (*Pushpanathan, supra* at 1016)

10 29. There is no privative clause in the *Teaching Profession Act*, S.B.C. 1987, c.19 (the “*Act*”) (*Pezim, supra* at 590 and 591). Section 40 of that *Act* contains a statutory right of appeal (*Southam, supra* at 766). Further, as pointed out by Goldie J.A. (Reasons, A.R., Vol. III, pp. 493-494), the *Act* also allows the Lieutenant Governor in Council to disallow a bylaw passed by the BCCT. These factors strongly suggest that the Legislature did not intend that the BCCT’s decisions were to be protected from judicial scrutiny.

30. The BCCT engaged in the analysis of general questions of law concerning “discrimination”, the purported protection of minorities, and human rights. This dictates that the Courts should review the BCCT’s decision on a correctness standard. (*Newfoundland Assoc. of Public Employees v. Nfld. Green Bay Health Care Centre*, [1996] 2 S.C.R. 3 at 11 (“*NAPE*”); *Canadian Broadcasting Corporation v. Canada (Labour Relations Board)*, [1995] 1 S.C.R. 157 at 187)

20 31. The only case cited by the BCCT in support of curial deference is *Pearlman v. Manitoba*, [1991] 2 S.C.R. 869 (BCCT’s Factum, para. 110). That case dealt with a law society disciplining one of its members. The assessment of whether a member of a law society has breached professional standards that are consistently administered by that law society based on a particular set of facts before it is squarely within the expertise of that body. However, this case involves a decision based on the BCCT’s analysis of “perceptions” and “risks” arising out of its rudimentary understanding of “discrimination”, human rights and the need to protect minorities.

32. Since the decision of the BCCT, in all respects, arises out of its assessment of “discriminatory practices” and the purported effects thereof, the standard of correctness is applicable to all aspects of its decision.

## II. ERRORS MADE BY THE BCCT

### A. DECIDING ISSUES OUTSIDE ITS STATUTORY MANDATE

33. The statutory mandate of the BCCT must be understood in light of the legislative intent underlying the *Act* under the “pragmatic and functional analysis” set out in *U.E.S., Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048 at 1088. (*Pushpanathan, supra.* at 1004-1005)

10 34. The purpose of the *Act* is to empower the BCCT 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 ... to encourage the professional interest of its members ...*” (section 4). Consistent with this primary objective, most of the *Act* relates to the certification of members and the BCCT’s disciplinary powers. The *Act* has 43 sections and of those, only three provisions (22(g), 23(1)(d) and 27) deal with approval of teacher education programs.

35. The creation and maintenance of professional standards is integral to each of the BCCT’s roles (see sections 23(1)(a) and (d), 25(1) and 28 of the *Act*). The BCCT has sought to define its entire jurisdiction in this matter within the words “public interest”. However, as held by Goldie J.A.:

20 In my view s.4 of the *Teaching Profession Act* is confined to the public interest in the establishment of standards named in the section and, as such, has little, if any, relevance to the case at bar. (Reasons, A.R. III, pp. 490-491; see also Reasons, A.R. III, pp. 484-491)

36. Pursuant to s. 23(1)(d), the BCCT created bylaws, policies and guidelines for the approval of teacher education programs. It did so knowing TWU’s application was forthcoming (Reasons, A.R., Vol. III, p. 489). Bylaw 5.C.02 (A.R., Vol. I, p. 82) states that the BCCT “shall establish criteria for the approval .... of teacher education programs.” These criteria are found in Policy P5.C.01 (A.R., Vol. I, pp. 83-89) and further in Guidelines (A.R., Vol. I, pp. 120-126). *None* of the stated criteria as discussed in paras. 73-77 of the BCCT’s Factum reflect concerns about a teacher education program based in a distinctive institution such as TWU.

37. The BCCT rejected TWU's application because of the "discriminatory practices" it purported to find at TWU and the religious beliefs at TWU which it viewed to be contrary to *Charter* and human rights values (BCCT's Factum, paras. 34 and 38). The BCCT's decision was not made on the basis of its own stated criteria but because of the BCCT's perception that the Community Standards would prohibit homosexuals from gaining access to the teacher education program (see Report to Members, A.R., Vol. II, pp. 325-326).

10 38. Regardless of what the BCCT now suggests was its concern when it rejected TWU's application, in reality, it made its determination principally on the basis of what it perceived to be the exclusionary nature of one aspect of the Community Standards (which is characterized as the "discriminatory practices" - see BCCT's Factum, para. 38 with footnote). It attempts to justify this decision based on the words "public interest" in the *Act*. Its "Report to Members" describes how the BCCT saw "public policy and the public interest" (which was the impetus for its decision) as a mandate to simply disapprove of what it viewed to be discrimination:

20 Therefore in reviewing a program application, the College must consider whether the institution offering the program discriminates against persons entitled to protection according to the fundamental values of our society. These values are embedded in the *Charter of Rights* and in human rights statutes enacted by Parliament and the British Columbia Legislature. They represent the public interest referred to in Section 4 of the *Teaching Profession Act*. (A.R., Vol. II, p.325)

39. However, as was stated by Philp J.A. in *Lindsay v. Manitoba* (1989), 62 D.L.R. (4<sup>th</sup>) 615 (Man.C.A.) at 626 (leave to appeal refused [1990] 1 S.C.R. x (subnom *Reimer Express Lines Ltd. v. Lindsay*)):

The words "public interest" are not defined in the new Act, but that does not make their meaning "a matter of policy entirely within [the Board's] jurisdiction". The meaning of those words, neither precise nor unambiguous in themselves, must be construed in the context of the statute in which they are found, for it is Parliament and not the Board which establishes the "policy", or the object or the purpose of the legislation.

30 40. The BCCT was not created to render judgment on the acceptability of religious beliefs. Neither was it created to enforce human rights legislation in an attempt to eradicate perceived discrimination or unilaterally undertake the protection of minorities. The B.C. Legislature granted such authority to the B.C. Human Rights Commission and Tribunal. The "public interest" in the context of s. 4 of the *Act* relates to establishing standards for the purpose of ensuring teachers are



properly trained, competent and of good character. It does not extend to generally protecting and preserving the rights and freedoms of minority groups that it perceives might be affected by TWU's religious nature (Cf. *Legal Profession Act*, R.S.B.C. 1996, c.255, section 3, per Goldie J.A.: Reasons, A.R. Vol. III, pp. 489-490 - *expressio unius est exclusio alterius*).

10 41. American courts have interpreted the phrase "public interest" in the context of administrative tribunals in precisely this manner. In *NAACP v. FPC*, 425 U.S. 662, 48 L.Ed. 2d 284 (1976) at 292 (L.Ed), the NAACP petitioned the Federal Power Commission ("FPC") to issue a rule requiring nondiscriminatory employment practices at all of its regulatees. The FPC refused, determining it did not have such jurisdiction. The United States Supreme Court ruled that the words "public interest" in the *Gas and Power Acts* was "not a directive to the [Federal Power] Commission to eradicate discrimination." Similarly, the BCCT is not a human rights tribunal and is not empowered to make determinations based on what it perceives to be "discriminatory practices."

42. The BCCT ought to have focused upon and made its decision on the basis of the administration, structure and academics of TWU's proposed program, not its disagreement with TWU's religious foundations or a resolve to "protect minorities". These considerations are extraneous to the objects of the *Act* and the BCCT's decision was therefore in excess of its jurisdiction. (*Service Employee's International Union v. Nipawin District Nurses Association*, [1975] 1 S.C.R. 382 at 389; see also *Smith & Rhuland v. The Queen*, [1953] 2 S.C.R. 95 at 98-100)

20 43. It is clear from the BCCT's decision and paragraph 63 of its Factum that the BCCT was not concerned that the education provided at TWU was substandard. The BCCT states that it looked to the *Charter* and human rights statutes to guide it in making its decision. If the BCCT were assessing the merits of TWU's proposed program, it would not have to rely on its interpretation of these documents. The BCCT was acting as a human rights tribunal and not as a self-governing professional body assessing a proposed teacher education program.

44. The BCCT attempts to justify its decision on other grounds, namely that approval of TWU's program would create:

- (a) the perception that the public school system (or TWU graduates) condone(s) discriminatory values or do(es) not uphold Canadian values; and

- (b) a risk that TWU graduates would not provide a supportive atmosphere for all users of public education.

(BCCT's Factum, para. 85)

These grounds are alluded to in the BCCT's Report to Members as an alternative ground for the denial of TWU's application. For the reasons set out subsequently at paras. 63-86, these propositions are fundamentally flawed.

## B. CHARTER AND HUMAN RIGHTS "VALUES"

10 45. In the alternative, if the BCCT had the jurisdiction to deny TWU's application on the basis of its perception that TWU is guilty of "discriminatory practices" that are contrary to *Charter* and human rights values, it erred by failing to properly consider such values.

### (i) Breach of "Values" Not a Rationale for Denial

46. The BCCT agrees that TWU is not subject to either the *Charter* or the B.C. *Human Rights Act* (para. 61) and denies applying either the *Charter* or human rights legislation to TWU (para. 63). However, the effect of its decision was to do just that. One of the "values" of these instruments is the limited scope of their applicability. The exclusion of TWU from the reach of the *Charter* and human rights legislation was a deliberate choice of legislatures that ought to be respected (*Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at 1160).

20 47. The BCCT purports to use the *Charter* and human rights "values" to disqualify TWU from receiving a certification to which it would otherwise be entitled. The effect of its decision is to require TWU to comply with provisions of the statutes containing these "values". Parliament and the Legislature have not dictated that such compliance is required and, as such, the BCCT's analysis must be in error.

### (ii) Proper "Values" Analysis

48. If, in the alternative, the BCCT was correct in undertaking a review of *Charter* and human rights values, it did so incorrectly by failing to recognize *all* such values which include the freedom of religion, expression and association. This failure is evident from the fact that the BCCT breached the *Charter* rights of both TWU and its students, of whom the Respondent Donna Lindquist is a representative (see arguments at paras. 87-120 below).

49. The process of considering and balancing competing *Charter* rights and human rights is difficult and complex. The BCCT failed to undertake this process. It purported to see what it thought were “discriminatory practices” and denied TWU’s application without any appropriate analysis.

50. A purported finding of “discriminatory practices” is not sufficient to find a contravention of *Charter* or human rights “values”, properly understood. As stated by Mr. Justice La Forest in *Gould*, *supra* at 598:

Life in society demands that we discriminate every day of our lives, and it is only certain forms of discrimination that are prohibited.

10 51. In conducting an analysis of human rights values, assuming it had jurisdiction to engage in one, the BCCT had to be correct. A true and complete analysis of such values would have shown, as conceded by the BCCT, that TWU is not subject to the *B.C. Human Rights Act*. This should have controlled the BCCT’s decision. Section 19 of *Human Rights Act* (now s. 41) provides that a religious and educational institution such as TWU is not considered to breach the *Human Rights Act* where it prefers adherents of its religious constituency. This is the balance of rights - or “values” - determined to be appropriate by the Legislature.

52. In *Caldwell v. Stuart*, [1984] 2 S.C.R. 603 at 626, Mr. Justice McIntyre eschewed a narrow construction of this provision. He concurred with the following words of Seaton J.A. from the B.C. Court of Appeal:

20 This is the only section in the Act that specifically preserves the right to associate ... In a negative sense s. 22 [later s. 19] is a limitation on the rights referred to in other parts of the Code. But in another sense it is the protection of the right to associate. Other sections ban religious discrimination; this section permits the promotion of the religion.

30 53. The Court thereby upheld the termination of a teacher who had breached Catholic teaching by marrying a non-Catholic divorced man in a civil ceremony. Such protection would have been rendered meaningless if, despite the lawfulness of the Catholic school’s decision, public universities were permitted to deny admission to graduates of that school because it would be contrary to the “public interest” to recognize the educational programs of an institution which followed “discriminatory practices.”

54. The purpose of s. 19 is to allow free association of like-minded individuals who, in this case, are bound together by a religiously based agreement to avoid certain types of conduct while part of that association. Consistent with historical Christianity, the TWU Community agrees to avoid homosexual conduct. TWU exists as part of a diverse society to promote the religious and educational interests of its community. The religious association of the members of the TWU Community gives rise to what the BCCT calls “discriminatory practices.” (See *Gould, supra* at 653-654)

10 55. The religious and educational association at TWU is valued and protected under the *Human Rights Act*. The BCCT’s decision ignores and thereby breaches this societal value and negates the very purpose of section 19.

56. Additionally, if the BCCT had gone beyond its bold assumptive statement that TWU engages in “discriminatory practices”, it would have discovered that TWU lawfully maintains its distinctive Christian community. Discrimination is defined by the B.C. *Human Rights Act* and “discriminatory practices” can *only* be legally defined and prevented by that legislation. (*NAPE, supra*. at 20)

20 57. Moreover, consistent with the values expressed in human rights legislation, TWU meets the new tests for establishing that the requirement that students sign and abide by the Community Standards is *bona fide* and reasonably justified. (*British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3 at 32-33 (“*Meiorin*”); *British Columbia (Supt. of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868 (“*Grismer*”))

(iii) Fundamentals of Human Rights “Values”

58. Further, the BCCT failed to recognize that TWU upholds the fundamental values underlying human rights statutes. In *Egan, supra*. at 595, Cory and Iacobucci JJ. stressed these fundamental values as follows:

In our democratic society, every individual is recognized as important and deserving of *respect* ... [and] ... should be *tolerated*. (emphasis added)

In *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143 at 171, McIntyre J. stated that the purpose of the *Charter* guarantee of equality is to promote “a society in which all are secure in

the knowledge that they are recognized at law as human beings equally *deserving of concern, respect and consideration*" (emphasis added). (See also *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825 at 860)

59. The essence of the right to be free from discrimination is the right to be tolerated in a way consistent with human dignity and respect. The BCCT, because of its focus on only one small aspect of the Community Standards, failed to recognize that the promotion of dignity and respect for all persons is an essential element of TWU's mission and its Community Standards. The Community Standards require faculty, staff and students to "*love one another*" and show "*respect for all people*". This includes "*making a habit of edifying others . . .*" (emphasis added) (A.R., Vol. I, pp. 52 and 56)

60. Clearly, the key values of respect and dignity underlying equality rights are advanced by the TWU community and would also be advanced by a TWU teacher education program.

#### C. STATUTORY OBJECTS OF TWU - PUBLIC INTEREST

61. The BCCT also erred by failing to recognize that the Legislature has affirmed the value of TWU as a distinctive educational institution.

62. As indicated in *Lindsay, supra.* at 626, legislatures primarily determine public interest and public policy. The B.C. Legislature mandates TWU to provide education and grant baccalaureate and graduate degrees with a Christian philosophy and viewpoint (*Trinity Junior College Act*, S.B.C. 1969, c. 44 and amendments) and thereby preserves and validates TWU's place in the educational community as being in the public interest (reaffirmed in 1972, 1977, 1979 and 1985). Obviously, the Legislature, which also passed both the *Human Rights Act* and the *Teaching Profession Act*, does not view TWU as contrary to fundamental Canadian values.

#### D. PERCEPTION: DISCRIMINATION BY THE BCCT

63. In discussing the issue of "perception", it is unclear whether the BCCT seeks to justify its decision - *ex post facto* - on a perception relating to (i) graduates who emerge from the TWU program; or (ii) the approval of the TWU program itself. Given this uncertainty, both will be addressed.

(i) Perception of TWU Graduates

64. At para. 107 of its Factum, the BCCT cites *Ross, supra.* for the proposition that *teachers* should be “perceived to uphold the values, belief and knowledge sought to be transmitted by the school system.” The BCCT left out the most important part of Mr. Justice La Forest’s quote (at 857) which reads:

By their *conduct*, teachers as “medium” must be perceived to uphold the values, beliefs and knowledge sought to be transmitted by the school system. The *conduct* of a teacher is evaluated on the basis of his or her position, rather than whether the *conduct* occurs within the classroom or beyond. (emphasis added)

10 The BCCT, however, states that it was influenced by the “*belief systems*” of TWU students and graduates and not by their *conduct*. (A.R., Vol. II, p. 316)

65. If such “belief systems” lead to an issue of competence or professional preparedness (which in this case they do not), the BCCT ought to have considered such issues on the evidence before it - i.e. it was an assessment of “risk”. However, if the concern was simply that such “belief systems” *may be perceived* as not upholding Canadian societal values (as argued at paras. 65, 68(a) and 79 of the BCCT’s Factum), it was inappropriate and offensive for the BCCT to deny TWU’s application on that basis.

20 66. It is never appropriate for a statutory delegate to make a decision based on *what may be perceived* as opposed to *what is true*. *Smith & Rhuland, supra.* stands for the proposition that a tribunal cannot justify the denial of a benefit to an applicant on an unfounded fear - or perception - that a belief system held by the applicant may cause harm. In *Healy v. James* 408 US 169, 33 L.Ed. 2d 266 (1972), the United States Supreme Court rejected the idea that the President of the Central Connecticut State College could deny recognition to a student group based on his unsubstantiated fear that the group might cause disturbances on the college campus (at 285 L. Ed.).

67. Decisions based upon possible perceptions are anathema to our law and society. While the BCCT pleads “*Charter values*”, it neglects to consider the discriminatory effect of its own decision which is “... based on the stereotypical application of presumed ... characteristics” (*Benner v. Canada*, [1997] 1 S.C.R. 358 at 390 and 401-402). Stereotypes are prejudices based on perceptions of individuals belonging to a group and violate human dignity (*Law v. Canada*, [1999] 1 S.C.R. 497

at 529). The BCCT's claim that approval of TWU's program will result in negative "perceptions" panders to and endorses stereotyping and contributes to the loss of dignity by persons belonging to the affected group - ie. members of the TWU Community. (See also *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montreal (City)*, 2000 S.C.C. 27 (May 3, 2000, Registry No. 26583) at paras. 37-39)

(ii) Perception of Approval of TWU's Application

10 68. The BCCT also seems to argue that it was justified in denying TWU's application because, if it had approved TWU's program, it might be perceived that the BCCT "countenanced" or placed its "imprimatur" on the "discriminatory practices" the BCCT purported to find at TWU (BCCT's Factum, paras. 79, 85(2) and 116). If its concern was about public perceptions, the BCCT was placing its decision in the hands of those it thought might hold such perceptions instead of deciding on relevant criteria.

69. It was not valid for the BCCT to deny TWU's application on this basis. If such "discriminatory practices" were to impact on the teacher education at TWU, this is a matter of "risk" and, therefore, evidence. If there is no such impact, the BCCT was simply acting as a human rights tribunal in expressing its disapproval of what it saw to be "discriminatory practices", without the requisite knowledge, expertise or statutory mandate to make that determination.

20 70. By arguing that it could not endorse or "countenance" one minor provision of the Community Standards, the BCCT condemned the religious beliefs upon which the Community Standards were established. It was not open for the BCCT to make its decision based on the moral disapprobation of the religious beliefs underlying the TWU Community whether held by the BCCT or others. Unless the religious nature of TWU could clearly be shown to have a negative impact on the "secular" teacher education provided at TWU (which would have to be established on the evidence) it is discrimination on the basis of religion for the BCCT to deny TWU's application. (*Roncarelli v. Duplessis*, [1959] S.C.R. 121; *Smith & Rhuland, supra.* at 99)

71. It would quite clearly be improper for the BCCT to question individual applicants for membership as to their religious and/or moral views on homosexual behaviour. It is, therefore, also

improper for the BCCT to deny TWU a teacher education program based on the disapproval of the religious beliefs underlying the Community Standards.

72. Further, as argued above at paras. 46-60, the BCCT failed to recognize that *Charter* and human rights values support TWU's place in our diverse society and that TWU seeks to uphold such values. In light of this, approval of TWU's program would be perceived in the most positive manner. The BCCT had no evidence to the contrary.

E. RISK: NO EVIDENCE

73. The BCCT had an obligation to make its decision on rational bases supported by the evidence before it. If the evidence before the BCCT is not capable of supporting its decision, that decision is patently unreasonable and cannot be sustained. (*Toronto (City) Board of Education v. OSSTF District 15*, [1997] 1 S.C.R. 487 at 521; *Dairy Producers Co-operative Ltd. v. Teamsters, Dairy and Produce Workers, Local 834* (1993), 16 Admin. L.R. (2d) 77 at 85 (Sask. C.A.))

74. The BCCT is now seeking to justify its decision based on a "risk" that the worldview or "belief systems" of TWU graduates might result in intolerance of homosexual students (A.R., Vol. II, p. 326; BCCT Factum, para. 121). Davies J. found this premise to be "inherently flawed because it requires many unfounded assumptions". The majority of the Court of Appeal held "that when [the Council of the BCCT] acted in anticipation of intolerant behaviour it acted in a patently unreasonable manner." (Reasons, A.R., Vol. III, pp. 451 and 498)

75. If the BCCT determined that there was such a risk, such a determination ought to have been based solely on the facts before it. As stated by Philp J.A. in *Lindsay, supra.* at 628:

While the determination of the public interest is a matter within the discretion of the Board, that determination must find justification in the facts. ... The Board's determination that the operation of truck undertakings for which Smith and Lindsay sought licenses would likely be detrimental to the public interest, was not justified by facts that had been established before the Board; rather, the determination had its foundation in assumptions the Board made. It was, at best, conjectural.

76. If the risk of intolerance by TWU graduates had been a critical factor in the BCCT's deliberations, it ought to have fully - and fairly - required the presentation of evidence on this point



and evaluated the risk on that evidence (*Oakwood Development Ltd. v. Rural Municipality of St. François Xavier*, [1985] 2 S.C.R. 164 at 175).

77. At para. 133 of its Factum, the BCCT states that it had evidence. However, the BCCT fails to recognize the critical point that, despite the careful studies of TWU's proposed program by the PAT and the TEPC, ***it had no evidence before it capable of supporting its decision.*** The BCCT can only cite rhetorical questions (paras. 79 and 121) concerning TWU graduates - questions that it did not ask at the time, and for which it did not apparently seek or obtain answers. Suspicions, questions, assumptions and perceptions are not evidence and decisions based on them should be anathema to both an administrative tribunal and a reviewing Court.

10 78. Goldie J.A. did not ask the wrong question, as argued by the BCCT (para. 124). He asked whether there was any evidence for the BCCT's assumption that intolerant behaviour would occur, noting that the BCCT ignored evidence rebutting that assumption (Reasons, A.R., Vol. III, p. 499).

79. All of the evidence before the BCCT supported TWU's application. Such evidence includes:

(a) the initial approval of the TWU program by the Minister of Education dated November 8, 1987 (pending establishment of the BCCT); (A.R., Vol. I, pp. 80-81)

(b) TWU's application, which promised that "TWU will strive to have a teacher education program that maintains sound academic and professional standards and that does so within the contours of a Christian worldview that encompasses an ethos of caring, justice and responsibility"; (A.R., Vol. I, p. 133)

20 (c) TWU's statement on Academic Freedom which prohibits "indoctrination and simplistic, prefabricated answers", values "human dignity and freedom" and grants students the "freedom to inquire" because "[t]ruth does not fear honest investigation"; (A.R., Vol. II, p. 217)

(d) the accreditation of TWU as a member of the AUCC; (A.R., Vol. II, pp. 211 and 301)

(e) the report of the PAT which, after assessing whether approval of TWU's program is in the "public interest", concluded that the "specific nature of the Trinity Western program should not be an impediment to it being approved ..."; (A.R., Vol. II, pp. 237-238)

- (f) the TEPC's recommendation that TWU's program be approved; (A.R., Vol. II, pp. 267-276)
- (g) the Community Standards which require students, faculty and staff to show "respect for all people"; and (A.R., Vol. I, pp. 51-60)
- (h) TWU's submission of June 14, 1996 which documented: (i) the historical success of TWU graduates in teaching in public school classrooms; (ii) the fact that TWU students are not required to accept a particular worldview and are made aware of all different philosophical and social perspectives; and (iii) the fact that TWU teaches tolerance as a first principle. (A.R., Vol. II, pp. 302-303, 305-306 and 308)

10 80. Despite the fact that TWU had been graduating teachers since 1985, the BCCT *had no evidence before it* that:

- (a) anyone at TWU holds or harbours hatred or intolerant viewpoints against homosexuals or would be perceived to do so;
- (b) any student had been asked to leave the TWU Community because he or she engaged in homosexual conduct;
- (c) any prospective student has been denied attendance at TWU because of his or her sexual orientation;
- (d) any teachings at TWU promote hatred or intolerance against homosexuals or would be perceived to do so;
- 20 (e) any TWU graduate, teaching in the public schools of B.C., has ever been perceived to be intolerant of, or lacked a professional attitude towards, homosexual students or parents; or
- (f) any TWU graduate, in the words of Goldie J.A., had advocated "beliefs that have aroused antipathy or which have tended to subvert the values of a multicultural secular society such as was the case [in *Ross, supra.*]". (Reasons, A.R., Vol. III, p.500)

81. As concluded by Goldie J.A.:

The unchallenged evidence supports the conclusion the beliefs reflected in TWU's community standards ... have not been an instrument of intolerance. (Reasons, A.R., Vol. III, p. 500)

82. The “risk” discussed in the BCCT’s Factum assumes that some TWU students, once they are teachers, will act in a manner intolerant of certain students and parents. Such thinking stereotypes Christians as intolerant bigots.

83. As stated by Madam Justice McLachlin (as she then was) in *Grismer* at paragraph 30:

It is clear from *Meiorin* that the old notion that “sufficient risk” could justify a discriminatory standard is no longer applicable ...

Here, there is not even any evidence of such “sufficient risk”. (See also *Andrews, supra.* at 155 & 156 and *McDaniel v. Paty*, 435 U.S. 618, 55 L.Ed. 2d 593 (1978) in which the United States Supreme Court held that legislation prohibiting clergy from holding elected office based on a fear or “risk” that they would subvert the anti-establishment guarantee was unconstitutional.)

84. The BCCT argues that once TWU students attend one year in the joint SFU/TWU program, any risk is alleviated (para. 126). It is nonsensical to contend that supposedly fundamental biases could be “cleansed” by a few courses at another institution. The BCCT also overlooked the fact that TWU graduates who emerged from the joint SFU/TWU program had also agreed to abide by the Community Standards in the final year when on the TWU campus. As stated by Goldie J.A.:

No one has suggested Simon Fraser’s contribution was instrumental in removing the intolerance Council has professed to find. (Reasons, A.R., Vol. III, p. 500)

85. If the BCCT is suggesting that the eight credit hours that many teacher education graduates took off the TWU campus (see paras. 10 and 11, above) were sufficient to “de-program” them, persuading them to abandon their “intolerant” attitudes, its submission is unsupported by any evidence or logic and is absurd. Approximately 70% of TWU education graduates since 1985 teach in the public schools (A.R., Vol. II, p. 302). It is likely that at least some of these graduates retained the beliefs they held during their years as TWU students. If intolerance is the natural consequence of such beliefs (whether held by TWU graduates or any teacher with evangelical Christian, Catholic or similar religious belief systems), the BCCT, as the disciplinary body for teachers, would surely have some evidence of such intolerance.

86. The BCCT cannot point to any evidence that the belief systems of TWU graduates would make them intolerant of anyone. If such intolerance were the probable result of attending TWU, the BCCT would have some evidence of such. It has none.

### **III. BREACHES OF THE CHARTER RIGHTS OF TWU and DONNA LINDQUIST**

87. As an administrative tribunal, the BCCT's denial of TWU's request for certification of its teacher education program is subject to *Charter* scrutiny (*Ross, supra.* at 850). As will be described, its denial breached the rights of both TWU and Donna Lindquist.

10 88. This case involves the interface of three of the fundamental freedoms (freedom of religion, expression and association) and the equality right. These rights and freedoms are each implicated as a result of the religious beliefs underlying TWU and its Community Standards. The BCCT denied approval to TWU's program based on its view that the commonly held and historically based religious belief at TWU proscribing homosexual conduct was potentially exclusionary. The BCCT burdened the exercise of the *Charter* rights of TWU and Donna Lindquist to hold these beliefs, express these beliefs and associate with others who are like-minded.

89. In essence, the BCCT penalized TWU and its community members - whom Donna Lindquist represents - for a tenet of their fundamental religious beliefs. The BCCT failed to recognize that, in the words of Dickson C.J.C. in *R. v. Big M Drug Mart*, [1985] 1 S.C.R. 295 at 336:

A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct.

20 90. TWU is not arguing that its religious foundations should immunize its proposed program from scrutiny on the basis of appropriate standards that are applicable to all other applicants for certification of a teacher education program. However, the BCCT did not make its decision on the basis of established standards of general applicability (although the imposition of such criteria, had they been established, would have breached the *Charter* in this case). TWU's program was denied because of TWU's religious beliefs and because TWU is created for the specific purpose of the collective pursuit of education in a religious context. This is not a case of TWU claiming immunity from scrutiny on relevant grounds. TWU is claiming that it should not be denied certification because of its religion.

91. The BCCT, relying on the dissenting reasons of Rowles J.A., dismisses the infringements of the fundamental freedoms of TWU and Donna Lindquist by arguing that approval of TWU's program is not an existing right. Coercion can take many forms, including indirect controls which limit alternative courses of conduct (*Big M Drug Mart, supra.* at pp. 336-7; *R. v. Edwards Books*, [1986] 2 S.C.R. 713 at 758-759) or, by extension, the availability of public benefits. The denial of a public benefit (ie. certification) to TWU and its community of faculty and students ***because of their religion*** is coercive as it places undue pressure on TWU as a religious community to alter its religious convictions regarding homosexual behaviour. The BCCT's decision thereby breaches fundamental freedoms.

10 A. SECTION 2(a) - FREEDOM OF CONSCIENCE AND RELIGION

92. Both TWU and Donna Lindquist claim an infringement of their s. 2(a) rights. TWU, as a distinctly religious community, has the same capacity to exercise religion corporately as does a religious community formed by a church, Mosque, Sikh Temple or Synagogue. Donna Lindquist's s. 2(a) rights are implicated as a TWU education student and community member who shares the religious beliefs of TWU.

93. Section 2(a) has been held to encompass the right of a parent to have one's children educated in accordance with one's religious beliefs and to ensure that "temporal" or "secular" aspects of education are delivered in a forum compatible with those beliefs (*B(R) v. Children's Aid Society*, [1995] 1 S.C.R. 315 at 382; *R. v. Jones*, [1986] 2 S.C.R. 284 at 296). It must also include the right to educate oneself in such a compatible forum. The BCCT is burdening Donna Lindquist (and other students) by denying certification of the program solely because she is receiving her teacher training in an environment that reflects and embodies her religious beliefs.

94. This principle relates equally to the BCCT's decision regardless of whether its ***purpose*** was to hinder religious-based education at TWU or whether this was merely the ***effect*** of its decision (*R. v. Edwards Books, supra.* at 759, 763-767).

95. TWU's s. 2(a) rights were infringed when the BCCT denied TWU a teacher education program because the BCCT disapproved of the religious beliefs upon which the TWU community is founded. The BCCT required TWU to choose between a tenet of its religion regarding

homosexual behaviour (ie. alleged “discriminatory practices”) and the privilege of educating teachers. This imposed a burden on religious belief and practice in the TWU community (*R. v. Edwards Books, supra.* at 759. See also reasoning in *Thomas v. Review Board of Indiana* (1981), 450 U.S. 707, 67 L.Ed. 624 at 634 and also *New Jersey State Board of Education v. Shelton College* (1982), 448 A. 2d 988 at 994 (N.J.S.C.), which case is cited with approval by La Forest J. in *Jones, supra.* at 300).

10 96. The BCCT’s decision was made under the guise of regulating teacher education in B.C. This is not a case of the BCCT regulating by using an established standard of general applicability. If it is a standard at all<sup>1</sup>, it applies only to TWU as it is specifically based on the BCCT’s disapproval of a tenet of the religious belief system on which TWU exists.

97. The religious nature of TWU informs and enhances the additional claims regarding freedom of expression and freedom of association. In fact, these claims can be encompassed within the s. 2(a) claims as the association of TWU is based in religion and the Community Standards (to which the BCCT so strongly objected) are the corporate expression of the religious beliefs of the members of the TWU community. However, to show the specific impact on expression and association rights, there is benefit in analyzing the breaches of these guarantees separately.

#### B. SECTION 2(b) - FREEDOM OF EXPRESSION

20 98. The freedom of expression of both Donna Lindquist and TWU is infringed by the BCCT’s decision. The expression at issue is the Community Standards document. This document clearly expresses meaning. In accordance with historical principles of Christianity, it expresses the religious character of TWU and also that of Donna Lindquist since she signed it with the intention of showing that it was consistent with her personal religious convictions. (A.R., Vol. I, pp. 25 - 27)

99. This Court has consistently acknowledged that s. 2(b) provides very broad protection of freedom of expression and that this fundamental freedom is of crucial importance in a democratic society (*Libman v. Quebec*, [1997] 3 S.C.R. 569 at 590 & 591). In *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326 at 1336 Mr. Justice Cory stated that the “vital importance”

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<sup>1</sup>It is not a bylaw, policy or guideline as created and published by the BCCT in anticipation of TWU’s application.

of free and uninhibited expression “cannot be over-emphasized” and that the rights enshrined in s.2(b) should “only be restricted in the clearest of circumstances”.

100. The expression contained in the Community Standards defines a group of people who are committed to associating with each other on the basis of a shared set of religious precepts. The Community Standards are a declaration of religious belief on the part of the members of the TWU community and assist in defining that community. The expression is both corporate and personal.

101. The expression in the Community Standards is at the heart of the purposes and values underlying the s. 2(b) guarantee. It promotes the seeking of religious truth. Moreover, as stated by Dickson C.J.C. and Lamer (as he then was) and Wilson JJ. in *Irwin Toy Ltd. v. Quebec*, [1989] 1 S.C.R. 927 at 976, one of the key values underlying the s.2(b) guarantee is that:

10 ... diversity in forms of individual self-fulfillment and human flourishing ought to be cultivated in an essentially tolerant, indeed welcoming, environment not only for the sake of those who convey meaning, but also for the sake of those to whom it is conveyed.

102. TWU is expressing, via the Community Standards, its religious nature which makes it distinct from public institutions of higher learning. The *Charter* requires that TWU’s expression, and that of its community members such as Donna Lindquist, be tolerated and indeed welcomed. This expression defines the association at TWU and also promotes the individual self-realization of those who choose to attend TWU, such as Donna Lindquist.

20 103. The BCCT has burdened the expression of TWU and Donna Lindquist by imposing a very significant cost on it. Because of TWU’s expression that particular conduct is not appropriate within the TWU community, the BCCT has denied an important benefit to TWU by not accrediting its program. In the result, Donna Lindquist will not receive automatic teacher certification upon completing her education at TWU.

104. The BCCT denied accreditation of TWU’s program because TWU expressed its distinct nature in terms of limiting acceptable behaviour for members of its community (which the BCCT simply labelled “discriminatory practices”). This is clearly a cost the BCCT fully intended to

impose on TWU because of TWU's corporate expression. This cost and burden are tied directly to the content of the Community Standards.

105. It is no answer that TWU can continue to express its religious beliefs. It must do so in the wilderness if it and its graduates are denied full participation in our diverse society. The BCCT, by conditioning the receipt of a state benefit, has imposed a negative consequence on TWU's expression and thereby infringed s. 2(b) of the *Charter* (*Ross, supra.* at 867).

106. The chilling effect of the BCCT's decision is clear. The BCCT has sent the message that the expression of certain religious beliefs will result in a denial of a public benefit to which a party would otherwise be entitled. (See *Canada (C.H.R.C.) v. Taylor*, [1990] 3 S.C.R. 892 at 964)

10 C. SECTION 2(d) - FREEDOM OF ASSOCIATION

107. Freedom of association is particularly important for the exercise of freedom of religion (*Ref. Re. Public Service Employees Relations Act*, [1987] 1 S.C.R. 313 at 391). In this case, Donna Lindquist and other TWU students associate together for the better exercise of their religion. Donna Lindquist's religion permeates her life and caused her to attend a Christian university attended by people whose beliefs generally reflect her own. Therefore, freedom to associate is of particular importance to her.

20 108. As held by Mr. Justice Sopinka in *Professional Institute of the Public Service of Canada v. Northwest Territories (Commissioner)*, [1990] 2 S.C.R. 367 at 402, freedom of association protects the collective exercise of constitutional rights and freedoms through association. In the case at bar, the freedoms of religion and expression of both TWU and Donna Lindquist are infringed by the BCCT's decision. Where the group's freedom of religion or expression is infringed, the freedom of association of each of the group's members is also infringed (*Libman, supra.* at 594-595).

109. It is the right of individuals under s. 2(d), including Donna Lindquist, to create and maintain the association which is TWU. The right to associate necessarily includes the right to define the nature of the association, which in this case includes an agreed restraint from engaging in homosexual behaviour. Shared religious beliefs define the TWU association and, as such, there is double protection under the *Charter*. The BCCT denied TWU - as a group - a benefit to which it



would have been entitled had the association been defined on other grounds (ie. excluding the religious tenet concerning homosexual behaviour).

110. The denial adversely affects individual members of the TWU community - such as Donna Lindquist - by denying them the entitlement of automatic teacher certification which they would have earned by completing TWU's program had it been approved by the BCCT.

111. The reasons of the United States Supreme Court in two cases are instructive in demonstrating the manner in which the BCCT has breached Donna Lindquist's freedom of association:

10 It is to be remembered that the effect of the College's denial of recognition was a form of prior restraint, denying petitioners' organization the range of associational activities described above.

...

[T]he Court has consistently disapproved governmental action imposing criminal sanctions or denying rights and privileges because of a citizen's association with an unpopular organization.

*Healy v. James, supra.* at 281 and 282 (L.Ed.)

20 Government actions that may unconstitutionally infringe upon [the freedom of association] can take a number of forms. Among other things, ***government may seek to impose penalties or withhold benefits from individuals because of their membership in a disfavoured group.*** (emphasis added)

*Roberts v. United States Jaycees* (1984), 468 U.S. 609, 82 L.Ed. 2d 462 at 474 (L.Ed.)

112. The BCCT denied Donna Lindquist the benefit of automatic certification through the TWU program because of the nature of her association with the TWU community. The BCCT assumed that graduates of the TWU program, including Donna Lindquist, may not be suitable to teach in public schools because of their association with TWU (ie. a "risk" that they might be intolerant). This is a classic case of prejudice and equates to guilt by association that penalizes Donna Lindquist for her decision to attend TWU and become a member of its community. This is contrary to freedom of association, is discriminatory and is inimical to fundamental *Charter* guarantees (*Andrews, supra.* at 174-175).

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D. SECTION 15(1) - EQUALITY RIGHTS

113. Donna Lindquist, as representative of all other students and faculty in TWU's teacher education program, has been denied equality in breach of s. 15(1) of the *Charter* which results in a loss to her essential human dignity. This Court recently set out the analytical framework for resolving claims under s. 15(1) in *Law, supra*.

114. The BCCT's decision draws a distinction between students at TWU and those at other institutions of higher learning in which there is an approved teacher education program. Donna Lindquist is unable to be automatically certified to teach in public schools upon graduating from TWU. Students who choose to attend other universities are able to obtain automatic certification upon graduation. (Reasons, A.R., Vol. III, p. 414)

115. The BCCT argues that it has applied the same criteria to all institutions and, as such, has drawn no distinction. With respect, this is false for two reasons:

- (a) While the BCCT states that denial was based on the need for graduates to have "adequate professional preparation" (para. 165), its Factum is concerned mostly with "perceptions" and "risks" based directly on its views of the religious beliefs underlying the TWU community. The BCCT made its decision based on the religious character of TWU and thereby singled out TWU students based on their religious beliefs.
- (b) In any event, TWU students such as Donna Lindquist are adversely affected by the BCCT's denial of approval. This denial impacts them because of their religiously based decision to attend TWU. The fact that they voluntarily choose to attend TWU is irrelevant. (*Adler v. Ontario*, [1996] 3 S.C.R. 609 at 657 (per L'Heureux-Dubé J.) and 717 (per McLachlin J., as she then was) and *Corbiere v. Canada*, [1999] 2 S.C.R. 203 at 223-224).

116. The differential treatment between Donna Lindquist and students at other universities is based on the enumerated ground of religion since Donna Lindquist attends at TWU because of her commitment to obtain training in an environment that is supportive of her religious beliefs.

117. The BCCT's decision is discriminatory in a substantive sense as it clearly evinces a prejudice against persons with evangelical Christian religious convictions. The BCCT stereotypes them by presuming they are likely to be intolerant (*Law, supra.* at 529 and 549). This stereotyping demeans the dignity of Donna Lindquist and all other members of the TWU community.

118. Such stereotyping is evident from the BCCT's Factum. The BCCT suggests TWU and its students are the equivalent of racists (paras. 57-60, 111-113 and 116). It compares the graduates of TWU to teachers in residential schools and suggests that they will, as public school teachers, teach students to reject "their parents, their very identity" (para. 122). There is no foundation for these inflammatory statements that prejudice and stereotype TWU students. The BCCT speaks of its "perceptions" that Donna Lindquist and others will not uphold the values, beliefs and knowledge of pluralism and tolerance (paras. 85, 107-108). Such stereotyping demeans Donna Lindquist as does the suggestion that her religious beliefs put her at "risk" of discounting the worth of some students (para. 121).

119. The BCCT simply perceives all TWU students uniformly and considers that permitting them to teach in public schools is risky. The BCCT fails to consider the individuality of TWU students or similarities in beliefs between TWU students and students in other programs. The BCCT also fails to consider the beliefs of Donna Lindquist concerning the equal worth of all human beings (*Law, supra.*, at 537-539).

120. The BCCT's decision implies that persons - like Donna Lindquist - with Christian or similar "belief systems" are not worthy or qualified to be teachers as a result of their religious beliefs. The BCCT's decision sends the message that Donna Lindquist is less deserving of equal respect and consideration. It is particularly invidious as the BCCT's message relates to Donna Lindquist's chosen profession and her ability to participate in a fundamental Canadian institution - public schools (*Law, supra.* at 540-541 and *Corbiere, supra.* at 270).

#### E. SECTION ONE

##### (i) Standard of Justification

121. The onus of justifying a breach of a fundamental right and freedom under section 1 lies as a heavy burden upon a government body seeking to uphold that breach. The task of justification is

not easily discharged and must be based on cogent and persuasive evidence. (*R.J.R.-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199 at 329; *R. v. Oakes*, [1986] 1 S.C.R. 103 at 138)

122. Rowles J.A. was of the view that the BCCT was balancing competing rights in society and should be granted deference when conducting a section 1 analysis (Reasons, A.R. Vol. III, p. 578). It is of note that the cases cited by Rowles J.A. in support of granting deference involve challenges to legislation and therefore discuss deference in the context of the actions of legislative bodies that are charged with representative functions. The Respondents submit that the rationale for deference in those circumstances should not extend to the decision of administrative functionaries like the BCCT.

10 123. The BCCT was not balancing competing rights but expressing its disapproval of the religious beliefs at TWU which it saw as resulting in “discriminatory practices”. The BCCT made no attempt to accommodate the rights and freedoms of TWU and Donna Lindquist.

124. In any event, the BCCT has no expertise in human rights analysis involving the balancing of competing rights in society. Nor has it produced any evidence to support such a balancing. The BCCT should not, therefore, be granted deference under any of the various steps of the section 1 analysis.

125. If any deference were to be granted to the BCCT, the words of McLachlin J. (as she then was) held in *R.J.R.-MacDonald, supra.* at 332 are instructive:

20 As with context, however, care must be taken not to extend the notion of deference too far. Deference must not be carried to the point of relieving the government of the burden which the Charter places on it of demonstrating that the limits it has imposed on guaranteed rights are reasonable and justifiable.

126. Additionally, it will be more difficult for the BCCT to justify its *Charter* infringements given that the protected activities affected by the BCCT are at the core of the guarantees infringed, as argued above. (*R.J.R.-MacDonald, supra.* at 280-281 and *Ross, supra.* at 871)

(ii) Prescribed by Law

127. The Legislature of British Columbia did not intend to give the BCCT the jurisdiction to breach the *Charter* rights of applicants before it (*Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038 at 1079). Mr. Justice LeDain in *R. v. Therens*, [1985] 1 S.C.R. 613 at 645 described this requirement:

The limit will be prescribed by law within the meaning of s. 1 if it is expressly provided for by statute or regulation, or results by necessary implication from the terms of a statute or regulation or from its operating requirements.

10 128. As indicated at paragraphs 33-44 above, there is no express statutory authority allowing the BCCT to make prejudicial findings of discrimination or to limit the freedoms of Donna Lindquist or TWU. The decision of the BCCT cannot, in any case, be said to have resulted by necessary implication from the terms of a statute or regulation, and is not therefore prescribed by law.

(iii) Pressing and Substantial Objective

129. Rowles J.A. defined the objective of the BCCT's decision as "to uphold values of non-discrimination in the public school system." (Reasons, A.R., Vol. III, p. 577) Such a broad and sweeping objective may well be compelling. However, Madam Justice McLachlin (as she then was) in *R.J.R.-MacDonald*, *supra*. at 335, indicated that if the objective is stated too broadly "its importance may be exaggerated and the analysis compromised."

20 130. Rather than the overarching objective stated by Rowles J.A., the objective must be viewed within the context of the actual decision of the BCCT. The June 29, 1996 resolution was to deny TWU's application "because Council still believes the proposed program follows discriminatory practices . . .". The BCCT was not primarily concerned with discrimination in public schools, but rather with voicing its disapproval of the religious beliefs and resulting perceived "discrimination" at TWU. Therefore, the BCCT's true objective in denying TWU's application was to exhibit a moral disapprobation of the Community Standards and religious beliefs of TWU and its community members. The imposition of the BCCT's particular conception of morality cannot be a pressing and substantial objective justifying a breach of the rights and freedoms of TWU and Donna Lindquist. (*R. v. Butler*, [1992] 1 S.C.R. 452 at 492)

(iv) Rational Connection

131. There is no rational connection between the broad objective as stated by Rowles J.A. and the total denial of TWU's application for approval of its teacher education program.

10 132. Approximately 70% of TWU education graduates since 1985 have obtained teaching positions in public schools. (Reasons, A.R., Vol. III, p.419) Moreover, British Columbia has many other public school teachers with similar belief systems and others who have been educated outside of British Columbia in teacher education programs similar to the one proposed by TWU. (A.R., Vol. II, pp. 238 and 308) However, the BCCT never had before it, nor has it subsequently produced, any evidence that such religious beliefs lead to discrimination, intolerance, harassment or harm to

133. In addition, based on the Community Standards (and historical Christian teachings), TWU students are committed to follow "an ethic of moral support, to "love one another", to "[show] respect for all people", and to "[make] a habit of edifying others, showing compassion, demonstrating unselfishness, and displaying patience." Contrary to the perception of the BCCT, TWU graduates would, based on their religious beliefs, be committed to tolerance as public school teachers. (A.R., Vol. I, pp. 51-53; Vol. II, p. 365)

20 134. Where a distinction that results in the infringement of *Charter* rights and freedoms is drawn on the basis of prejudicial stereotypes rather than demonstrable, empirical realities, there cannot be a rational connection between the measure taken and the goal. The BCCT should not be allowed to justify its breaches of the rights and freedoms of TWU and Donna Lindquist on the basis of presumptions which are, themselves, discriminatory.

135. Even if the objective of the BCCT was as stated by Rowles J.A., the actual decision of the BCCT was based on stereotypes and prejudicial notions of how TWU education students might act in public school classrooms given their religious beliefs. As found by both Davies J. and Goldie J.A., there was absolutely no evidence to support the BCCT's concern that TWU graduates, based on their beliefs, will conduct themselves inappropriately in the public school classroom. (Reasons, A.R., Vol. III, pp. 451 and 500) As such, the BCCT's decision is not rationally connected even to the broad objective stated by Rowles J.A.

(v) Minimal Impairment

136. The BCCT ignored the recommendations of its own PAT and TEPC and totally denied TWU's application. This prohibition of a teacher education program at TWU was made without evidence that such a denial was necessary.

137. The BCCT has to justify, on the evidence, that a total denial of TWU's application was required. In *R.J.R.-MacDonald, supra.* at 353, Iacobucci J., writing in the minority, stated the principle this way:

10 ... the total prohibition (the full rights-impairing option) ... *is only constitutionally acceptable if information is provided that such a total prohibition is necessary* in order for the legislation to achieve a pressing and substantial goal. When, as in the case at bar, the evidence is unclear whether partial prohibition is as effective as a full prohibition, the *Charter* requires that the legislature enact the partial denial of the implicated *Charter* right. (emphasis added)

138. There were numerous other measures which could accomplish the BCCT objective (as stated by Rowles J.A.) while lessening the impact of the *Charter* infringements. These alternative measures include:

(a) Five Year "Interim" Approval: Both the PAT and the TEPC recommended an interim five year approval of the teacher education program at TWU. (A.R., Vol. II, pp. 259 and 275-276)

20 (b) Annual Monitoring: Both the PAT and the TEPC recommended that the BCCT monitor the TWU program on an annual basis. (A.R., Vol. II, pp. 241 and 275)

(c) Social Issues Course: PAT and TEPC recommended that the social issues course currently offered at TWU be mandatory for all education students. This course includes a textbook frequently used in public universities. (A.R., Vol. II, pp. 252, 276 and 306)

(d) Workshops On Tolerance: TWU was agreeable to having workshops on tolerance conducted for education students by members of the gay and lesbian community. (Reasons, A.R., Vol. III, pp. 579-580)

30 (e) Faculty Associates From Public Schools: During the teacher education program, students would do a teaching practicum with a teacher-mentor or faculty associate. PAT and TEPC recommended that these faculty associates be only from the public school system. (A.R., Vol. II, pp. 250 and 276)

- (f) Discipline When Required: As the disciplinary body for public school teachers in British Columbia, the BCCT is able to appropriately discipline a teacher who engages in professional misconduct be it harassment, discrimination or intolerance. (*Teaching Profession Act*)

139. Any of the above measures, or a combination of such, could have materially lessened the impact of the BCCT's *Charter* violations. Madam Justice McLachlin (as she then was) stated in *R.J.R.-MacDonald, supra.* at 343:

. . . if the government fails to explain why a significantly less intrusive and equally effective measure was not chosen, the law may fail.

10 As the BCCT has produced no evidence that a total prohibition is required to achieve its objective, nor why these less intrusive alternatives are unacceptable, the total prohibition cannot be justifiable in a free and democratic society. (See also *Corbiere, supra* at 277-278)

(vi) Proportionality Between Effects and Measures

140. The deleterious effects on the *Charter* rights and freedoms of TWU and Donna Lindquist far outweigh the benefits, if any, achieved by the BCCT in its refusal to certify TWU's teacher education program. (*Dagenais v. C.B.C.*, [1994] 3 S.C.R. 835 at 889)

20 141. It is important to consider the constitutional and societal significance of the interests adversely affected, the severity of the rights deprivation suffered by the affected parties and the potential of entrenching the marginalization or stigmatization of particular groups. (*Egan, supra.* at 560-561)

142. The BCCT's decision has a significant negative impact on the professional aspirations of TWU education students, including Donna Lindquist. (Reasons, A.R., Vol. III, p. 586)

143. Religious organizations such as TWU are an important part of the diversity and cultural mosaic that is Canadian society. Long before the *Charter*, Rand J. in *Saumur v. Quebec (City)*, [1953] 2 S.C.R. 299 at 327 recognized that religious belief and religious organizations play a significant role in Canada:

. . . that the untrammelled affirmations of religious belief and its propagation, personal or institutional, remain as of the greatest constitutional significance throughout the Dominion is unquestionable.



144. The BCCT's decision disenfranchises many religious communities as full contributors to our diverse Canadian society. It sends a strong and sinister message that religious organizations no longer have a valid public role to play. Particularly the message is that TWU graduates, and other persons holding similar religious beliefs, are no longer welcome as teachers in public school classrooms of British Columbia. The BCCT decision "stigmatizes" TWU, Donna Lindquist, past and future TWU education graduates, and teachers with similar religious beliefs as being intolerant, discriminatory and less worthy in Canadian society.

145. The BCCT's decision creates a cloud over TWU's reputation and the quality of education at TWU and particularly the teacher education program. In attempting to justify its decision, the BCCT published statements to every public school teacher, administrative officer and superintendent in British Columbia, in its Fall, 1996 Report to Members which stigmatized every member of the TWU community:

Councillors also expressed concern that the particular worldview held by Trinity Western University with respect to homosexual behaviour may have a detrimental effect in the learning environment of public schools. (A.R., Vol. II, p. 326)

146. These stigmatizing and disenfranchising deleterious effects cannot be justified by the purported, but unsubstantiated, salutary effects sought to be achieved by the BCCT.

#### IV. APPROVAL OF TWU'S TEACHER EDUCATION PROGRAM

147. After an extensive examination of the facts in issue, Davies J. found that the decision of the BCCT was made without foundation and "must be quashed". He exercised his discretion by making an order in the nature of *certiorari* and further by ordering that the BCCT be directed to approve TWU's teacher education program for accreditation purposes subject to the conditions recommended by the TEPC. Goldie J.A. upheld this order. (Reasons, A.R., Vol. III, pp. 453-454 and 502-504)

148. Davies J. should be granted considerable deference in making these discretionary orders. Lamer C.J. stated in *Canadian Pacific Ltd. v. Matsqui Indian Band*, [1996] 1 S.C.R. 3 at 32:

This discretionary determination should not be taken lightly by reviewing courts. It was Joyal J.'s discretion to exercise, and unless he considered irrelevant factors, failed to consider relevant factors, or reached an unreasonable conclusion, then his

decision should be respected. To quote Lord Diplock in *Hudmor Productions Ltd. v. Hamilton*, [1982] 1 All E.R. 1042, at p. 1046, an appellate court “must defer to the judge’s exercise of his discretion and must not interfere with it merely on the ground that the members of the appellate court would have exercised the discretion differently”.

149. In *Khalil v. Canada (Secretary of State)*, [1999] 4 F.C. 661 (F.C.A.) at 674, Linden J.A. applied this principle in the context of mandamus:

10 While it is true that, over the years, courts have elaborated various criteria which guide the exercise of discretion in decisions regarding the prerogative writs, it is settled law that the granting or denial of mandamus is a discretionary order which will not be varied unless the Judge at first instance has committed clear error in the exercise of his or her discretion.

150. The discretionary remedies available to Davies J. would be expanded to include a “just and appropriate” remedy pursuant to Section 24(1) of the *Charter* if the *Charter* rights of TWU or Donna Lindquist have been violated. (*Dagenais, supra.* at 866.)

20 151. The BCCT does not have an unfettered discretion in that, upon commencement of a review of TWU’s proposed teacher education program, the BCCT owed TWU a duty to act upon relevant considerations (*Apotex Inc. v. Canada (Attorney-General)*, [1994] 1 F.C. 742 (F.C.A.) at 766, affirmed [1994], 3 S.C.R. 1100). Once an applicant for a teacher education program has satisfied **all relevant criteria**, the application must be approved.

152. **Only** the May 17, 1996 motion included a statement “that TWU does not fully meet the criteria”. On June 14, 1996, TWU representatives presented a document, entitled *Response to the May 17, 1996 Motion*, at the appeal hearing by the BCCT. (A.R., Vol. II, pp. 297-310) The oral and written submissions of TWU fully addressed and satisfied all concerns expressed by the BCCT as set out in the May 22, 1996 letter of the Registrar of the BCCT, except the one concern with respect to the religious beliefs of the TWU community. In her letter of June 28, 1996, the Registrar of the BCCT acknowledged that TWU had addressed these other issues:

30 When the appeal was considered on June 14, 1996, there was, as you will recall, a full discussion of the motion and points that were raised in my letter and a complete opportunity provided to Trinity Western University to meet them. (A.R., Vol. II, p. 317)

153. It is readily apparent from the wording of the June 29, 1996 BCCT decision that, having reconsidered its earlier decision, it had no remaining concerns other than the “discriminatory practices.” This was the only issue raised by members of the BCCT at the June 29, 1996 meeting (A.R., Vol. II, pp. 359-360). Also, the Report to Members contains no reference to any other remaining concerns.

154. Goldie J.A. confirmed the findings of Davies J. in this regard:

10 The question of compliance with the College's criteria was referred to in the Registrar's letter of 22 May 1996. There is no mention of criteria in the resolutions of 14 and 29 June. What was adopted on the latter date was explicitly adopted “... because Council still believes the proposed program follows discriminatory practices 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. *Meeting the College's criteria appears to be no longer a live issue.*

20 I am of the view that if Council had properly instructed itself on the law and had not fallen into the error of concluding TWU required students to accept its community values where would have been neither basis for nor need of further orders beyond those contained in the TEPC's recommendation. That appears to have been the view of the trial judge and I am in agreement with him. (emphasis added)  
(Reasons, A.R., Vol. III, pp. 503-504; see also Reasons, A.R., Vol. III, p. 478)

155. An Appellate Court should not interfere with such findings of fact, including findings based on affidavit evidence, unless such findings cannot reasonably be supported by the evidence. (*Orangeville Raceway Ltd. v. Wood Gundy Inc.* (1995), 6 B.C.L.R. (3d) 391 at 400 (B.C.C.A.))

30 156. Where the decision-making body has discretion but exercises that discretion by taking irrelevant considerations into account, this Court has upheld orders compelling the exercise of a statutory power of decision in a particular way (*Smith & Rhuland, supra; Prince George v. Payne*, [1978] 1 S.C.R. 458). TWU met all relevant criteria for approval of its teacher education program; however, the BCCT withheld approval solely because of its disagreement with certain religious beliefs of the TWU community. Since this reason for denial was illegal and contrary to the *Charter*, the BCCT's discretion was spent and the order by Davies J. was justified.

157. The issue of whether the proposed program follows discriminatory practices which are contrary to the public interest and public policy has been thoroughly adjudicated. In *Wrights'*

*Canadian Ropes Ltd. v. Minister of National Revenue*, [1947] A.C. 109 (J.C.P.C.) at 125-126, Lord Greene stated:

The issues have been fought out by action in the Courts and the appeal of the respondents was in terms allowed by the Supreme Court. The view submitted by the appellant, if correct, would give the Minister a second opportunity of making a determination unfavourable to the respondents and thus depriving them of the fruits of their victory.

158. The length of delay, added expense to the parties and purpose of a rehearing are relevant factors to be considered by the Court. L'Heureux-Dubé J. stated in *NAPE, supra.* at 26:

10 However, almost eight years have passed since the Board convened. . . . In the exceptional circumstances of this case, sending the grievance back for redetermination would serve no purpose and would inflict additional, needless expense on the parties.

159. TWU originally applied for approval of its teacher education program thirteen years ago. (A.R., Vol. I, pp. 34-36 and 92-107) TWU now wishes to proceed with its teacher education program in full compliance with the conditions recommended by PAT and the TEPC. There is no guarantee that the current arrangement with SFU will continue. Further delay could only prejudice the entire Education degree program at TWU. No useful purpose will be served in now ordering a rehearing by the BCCT when TWU has already met all relevant criteria. (*Hansen v. College of Teachers (British Columbia)* (1993), 87 B.C.L.R. (2d) 86 (B.C.C.A.) at 97)

20

160. The time has come for finality.

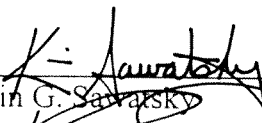
**PART IV**

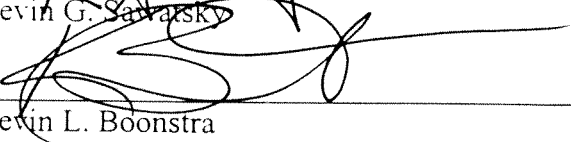
**NATURE OF ORDER SOUGHT**

The Respondent requests that this Appeal be dismissed with costs to the Respondents.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

  
\_\_\_\_\_  
Robert G. Kuhn

  
\_\_\_\_\_  
Kevin G. Sawatsky

  
\_\_\_\_\_  
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May 19, 2000

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# HUMAN RIGHTS ACT

## CHAPTER 22

*Assented to May 16, 1984.*

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### Interpretation

#### 1. In this Act

- "age" means an age of 19 years or more and less than 65 years;
- "council" means the British Columbia Council of Human Rights;
- "discrimination" includes the conduct described in section 2, 3 (1) (a), 4 (a) or (b), 5 (1) (a), 6, 8 (1) (a) or (2) or 9 (a) or (b);
- "employers' organization" means an organization of employers formed for purposes that include the regulation of relations between employers and employees;
- "employment" includes the relationship of master and servant, master and apprentice and principal and agent, if a substantial part of the agent's services relate to the affairs of one principal, and "employ" has a corresponding meaning;
- "employment agency" includes a person who undertakes, with or without compensation, to procure employees for employers or to procure employment for persons;
- "occupational association" means an organization, other than a trade union or employers' organization, in which membership is a prerequisite to carrying on a trade, occupation or profession;

“person” includes an employer, an employment agency, an employers’ organization, an occupational association and a trade union;

“trade union” means an organization of employees formed for purposes that include the regulation of relations between employees and employers.

1984-22-1; 1992-43-1; 1993-27-1.

## PART 1

### DISCRIMINATORY PRACTICES PROHIBITED

#### Discriminatory publication

2. (1) No person shall publish, issue or display or cause to be published, issued or displayed any statement, publication, notice, sign, symbol, emblem or other representation that

(a) indicates discrimination or an intention to discriminate against a person or a group or class of persons, or

(b) is likely to expose a person or a group or class of persons to hatred or contempt

because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or that group or class of persons.

(2) Subsection (1) does not apply to a private communication or to a communication intended to be private.

1993-27-2.

#### Discrimination in public facilities

3. (1) No person, without a bona fide and reasonable justification, shall

(a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or

(b) discriminate against a person or class of persons with respect to any accommodation, service or facility customarily available to the public, because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex or sexual orientation of that person or class of persons.

(2) A person does not contravene this section by discriminating

(a) on the basis of sex, if the discrimination relates to the maintenance of public decency or to the determination of premiums or benefits under contracts of life or health insurance, or

(b) on the basis of physical or mental disability if the discrimination relates to the determination of premiums or benefits under contracts of life or health insurance.

1992-43-2.

#### Discrimination in purchase of property

4. No person shall

(a) deny to a person or class of persons the opportunity to purchase a commercial unit or dwelling unit that is in any way represented as being available for sale,

- (b) deny to a person or class of persons the opportunity to acquire land or an interest in land, or
- (c) discriminate against a person or class of persons with respect to a term or condition of the purchase or other acquisition of a commercial unit, dwelling unit, land or interest in land.

because of the race, colour, ancestry, place of origin, religion, marital status, physical or mental disability, sexual orientation or sex of that person or class of persons.

1984-22-4; 1992-43-3.

#### Discrimination in tenancy premises

5. (1) No person shall

- (a) deny to a person or class of persons the right to occupy, as a tenant, space that is represented as being available for occupancy by a tenant, or
- (b) discriminate against a person or class of persons with respect to a term or condition of the tenancy of the space.

because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or class of persons, or of any other person or class of persons.

(2) Subsection (1) does not apply

- (a) if the space is to be occupied by another person who is to share, with the person making the representation, the use of any sleeping, bathroom or cooking facilities in the space,
- (b) as it relates to family status or age.
  - (i) if the space is a rental unit in residential premises in which every rental unit is reserved for rental to a person 55 years of age or older or to 2 or more persons, at least one of whom is 55 years of age or older, or
  - (ii) a rental unit in a prescribed class of residential premises, and
- (c) as it relates to physical or mental disability, if
  - (i) the space is a rental unit in residential premises,
  - (ii) the rental unit and the residential premises of which the rental unit forms part,
    - (A) are designed to accommodate persons with disabilities, and
    - (B) conform to the prescribed standards, and
  - (iii) the rental unit is offered for rent exclusively to a person with a disability or to 2 or more persons, at least one of whom has a physical or mental disability, as the case be.

1992-43-4.

#### Discrimination in employment advertisements

6. No person shall publish or cause to be published an advertisement in connection with employment or prospective employment that expresses a limitation, specification or preference as to race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age unless the limitation, specification or preference is based on a bona fide occupational requirement.

1984-22-6; 1992-43-5.

#### Discrimination in wages

7. (1) No employer shall discriminate between his male or female employees by employing an employee of one sex for work at a rate of pay that is less than the rate of

pay at which an employee of the other sex is employed by that employer for similar or substantially similar work.

(2) For the purposes of subsection (1), the concept of skill, effort and responsibility shall, subject to such factors in respect of pay rates as seniority systems, merit systems and systems that measure earnings by quantity or quality of production, be used to determine what is similar or substantially similar work.

(3) A difference in the rate of pay between employees of different sexes based on a factor other than sex does not constitute a failure to comply with this section where the factor on which the difference is based would reasonably justify the difference.

(4) No employer shall reduce the rate of pay of an employee in order to comply with this section.

(5) Where an employee is paid less than the rate of pay to which he is entitled under this section, he is entitled to recover from his employer, by action, the difference between the amount paid and the amount to which he is entitled, together with the costs, but

- (a) no action shall be commenced later than 12 months from the termination of his services, and
- (b) the action applies only to wages of an employee during the 12 month period immediately preceding the date of the termination of his services, or the date of the commencement of his action, whichever date occurs first.

1984-22-7.

#### Discrimination in employment

8. (1) No person shall

- (a) refuse to employ or refuse to continue to employ a person, or
- (b) discriminate against a person with respect to employment or any term or condition of employment,

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

(2) No employment agency shall refuse to refer a person for employment for any reason mentioned in subsection (1).

(3) Subsection (1) does not apply

- (a) as it relates to age, to any bona fide scheme based on seniority, or
- (b) as it relates to marital status, physical or mental disability, sex or age, to the operation of any bona fide retirement, superannuation or pension plan or to a bona fide group or employee insurance plan.

(4) Subsections (1) and (2) do not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational requirement.

1984-22-8; 1992-43-6.

#### Discrimination by unions and associations

9. No trade union, employers' organization or occupational association shall

- (a) exclude any person from membership,

(b) expel or suspend any member, or  
 (c) discriminate against any person or member  
 because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or member, or because that person or member has been convicted of a criminal or summary conviction offence that is unrelated to the membership or intended membership.

1992-43-7

## PART 2

## COUNCIL OF HUMAN RIGHTS

**Council established**

**10.** (1) There shall be established a council known as the British Columbia Council of Human Rights consisting of those members appointed by the Lieutenant Governor in Council to hold office during pleasure.

(2) The Lieutenant Governor in Council shall designate a member of the council as chairman.

(2.1) The council may, in writing, delegate to one or more of its members or to any other person an administrative function of the council.

(2.2) Where a member of the council resigns or where the member's appointment to the council terminates, the member may continue to act as a member of the council in relation to a proceeding that has been commenced under section 14 (1) (d) until the proceeding is completed.

(3) Each member of the council shall be paid the actual and reasonable expenses incurred by him in discharging his duties as a member of the council, and a member who is not an employee under the *Public Service Act* shall be paid remuneration for his services as a member of the council as the Lieutenant Governor in Council orders.

1984-22-10; 1989-53-2.

**Complaints**

**11.** (1) Any person, on the person's own behalf or on behalf of another person or of a group or class of persons, who alleges that any person is discriminating or has discriminated against that person or another person or against a group or class of persons, whether or not a member of that group or class, may file with the council a complaint, in a form satisfactory to the council, giving particulars of the discrimination.

(2) If a complaint is filed by a person on behalf of another person or a group or class of persons, the council may refuse to deal with the complaint unless satisfied that, as the case may be,

(a) the person alleged to have been discriminated against consents, or

(b) proceeding with the complaint is in the interest of the group or class on behalf of which the complaint is made.

(3) The council may deal with 2 or more complaints together if it is satisfied that the complaints involve substantially the same issues.

(4) Subject to section 13, the chair of the council shall investigate a complaint and endeavour to assist the parties to the complaint to achieve a settlement.

1992-43-8.

#### Inspection of records or things

**12.** For the purposes of conducting an investigation, the chairman of the council may make an examination and inquiry that he considers necessary to ascertain whether this Act has been complied with and may

- (a) require a complainant or a person who is alleged to have contravened this Act to disclose, orally or in writing, information respecting the subject matter of the complaint, and
- (b) require the production of records or things relating to the subject matter of the complaint.

1984-22-12; 1989-53-4; 1992-43-9

#### Decision not to proceed with investigation

**13.** (1) The council may decide not to proceed with the investigation of a complaint where it appears to the council that the complaint

- (a) is not within the jurisdiction of the council,
- (b) could be more appropriately dealt with under another Act,
- (c) is trivial, frivolous, vexatious or made in bad faith, or
- (d) is based on facts that occurred more than 6 months before the complaint was filed, unless the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

(2) The council shall not decline to proceed with an investigation by reason only that there was no intent by the person against whom the complaint was made to contravene this Act.

(3) Where the council decides not to proceed with an investigation, it shall so inform the complainant in writing.

1984-22-13.

#### Procedure after investigation

**14.** (1) On completion of an investigation, the chairman shall

- (a) refer the complaint to the council for a determination as to whether the proceeding should be discontinued,
- (b) [Repealed 1989-53-5.]
- (c) submit a report to the minister, or
- (d) designate one member of the council to receive, as specified by the member, written or oral submissions from the complainant and the person alleged to have contravened this Act, and the member of council
  - (i) where he considers the complaint is not justified, shall dismiss the complaint, or
  - (ii) where he considers the complaint is justified, shall make an order described in section 17 (2) (a) and may make an order described in section 17 (2) (b), (c) or (d).

(2) Section 16 (4) and (5) applies where oral submissions are made under subsection (1) (d) of this section.



(2.1) A member of the council who is designated under subsection (1) (d) has, for the purposes of that subsection,

- (a) the privileges and protection of section 12 of the *Inquiry Act*, and
- (b) where oral submissions are made under subsection (1) (d), the power of sections 15 and 16 of the *Inquiry Act*

given to a commissioner appointed under Part 2 of that Act.

(3) On receipt of a report under subsection (1) (c), the minister shall

- (a) refer the complaint to a board of inquiry, or
- (b) order that the proceedings be discontinued.

1984-22-14; 1985-51-32, effective July 19, 1985 (B.C. Reg. 232/85); 1989-53-5;  
1992-43-10.

#### Decision to be communicated in writing

**15.** A determination under section 14 (1) (a), an order under section 14 (1) (d) (ii) or section 14 (3) or the dismissal of a complaint under section 14 (1) (d) (i) shall be communicated in writing to the complainant and the person who is alleged to have contravened this Act, and, where the proceedings are discontinued or the complaint is dismissed, no further proceedings under this Act shall be taken in relation to the subject matter of the discontinued proceedings or the dismissed complaint.

1984-22-15; 1989-53-6.

### PART 3

#### BOARD OF INQUIRY

##### Board of inquiry

**16.** (1) A board of inquiry shall consist of one person appointed by the minister.

(2) A board of inquiry has, for the purposes of a reference under section 14 (3), the power, privileges and protection of sections 12, 15 and 16 of the *Inquiry Act* given to a commissioner appointed under Part 2 of that Act.

(3) The persons who are entitled to be parties to proceedings before a board of inquiry are

- (a) the complainant,
- (b) where the complaint was filed under section 11 (2), the person who filed the complaint on behalf of the complainant,
- (c) the person who is alleged to have contravened this Act, and
- (d) any other person whom the board of inquiry considers would be directly affected by an order made by it.

(4) A board of inquiry shall give the parties the opportunity to be represented by counsel, to present relevant evidence, to cross examine witnesses and to make submissions.

(5) A board of inquiry may receive and accept on oath, affidavit or otherwise, evidence or information that it, in its discretion, considers necessary and appropriate, whether or not the evidence or information would be admissible in a court of law.

(6) Where a party to a matter before a board of inquiry complains to the minister that the board has failed to proceed expeditiously, the minister may, after consulting the

parties and the board, issue an order he considers necessary to ensure the matter will be disposed of without further undue delay.

1984-22-16.

#### Disposition of complaints

17. (1) Where a board of inquiry considers that a complaint is not justified, it shall dismiss the complaint.

(2) Where a board of inquiry considers that a complaint is justified, it

- (a) shall order the person who contravened this Act to cease the contravention and to refrain from committing the same or a similar contravention,
- (b) may make a declaratory order that conduct of the type complained of, or similar conduct, is discrimination contrary to this Act.
- (c) may order the person who contravened this Act to do one or both of the following:

- (i) take steps, specified in the order, to ameliorate the effects of the discriminatory practice;

- (ii) adopt and implement an employment equity program or other special program if the evidence at the hearing has disclosed that the person engaged in a pattern or practice that contravenes this Act, and

- (d) if the person discriminated against is a party to the proceedings, may order the person who contravened this Act to do one or more of the following:

- (i) make available to the person discriminated against the right, opportunity or privilege that, in the opinion of the board, the person was denied contrary to this Act;

- (ii) compensate the person discriminated against for all, or a part the board determines, of any wages or salary lost, or expenses incurred, by the contravention;

- (iii) pay to the person discriminated against an amount that the board of inquiry considers appropriate to compensate that person for injury to dignity, feelings and self respect or to any of them.

(3) A board of inquiry may make an order as to costs it considers appropriate.

(4) Where an order is made under subsection (2) (a), (c) or (d) or (3) or section 14 (1) (d) (ii), the council or the person who was discriminated against and in whose favour the order is made may file a certified copy of the order with the Supreme Court and on being filed the order has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of that court.

1984-22-17; 1989-40-102; 1992-43-11.

## PART 4

### GENERAL

#### Disclosure

18. (1) A member of the council or any person employed in the administration of this Act shall not be required in any proceedings or otherwise, except before a board of inquiry or in a judicial review respecting a complaint under this Act,

- (a) to give evidence, or
- (b) to produce records

relating to information obtained or a communication received in the investigation of a complaint under this Act.

(2) The minister shall not be compelled to give evidence in any proceedings or otherwise respecting any matter, communication or information connected with the administration or operation of this Act, or otherwise coming to his knowledge under or by reason of this Act.

1984-22-18.

### Exemptions

**19.** (1) Where a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or group shall not be considered as contravening this Act because it is granting a preference to members of the identifiable group or class of persons.

(2) The council may approve any program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups, and any approved program or activity shall be deemed not to be in contravention of this Act.

1984-22-19.

### Special programs

**19.1** (1) It is not discrimination or a contravention of this Act to plan, advertise, adopt or implement an employment equity program, that

- (a) has as its objective the amelioration of conditions of disadvantaged individuals or groups who are disadvantaged because of race, colour, ancestry, place of origin, physical or mental disability or sex, and
- (b) achieves or is reasonably likely to achieve that objective.

(2) The council may

- (a) make general recommendations concerning desirable objectives for, and
- (b) on application give advice and assistance with respect to the adoption or carrying out of

employment equity programs or other special programs or activities that have as their objective the amelioration of conditions of disadvantaged individuals or groups.

1992-43-12.

### Protection

**20.** No person shall evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on or otherwise discriminate against a person because that person complains or is named in a complaint, gives evidence or otherwise assists in respect of the initiation or prosecution of a complaint or other proceeding under this Act.

1984-22-20; 1992-43-13.

**Style of cause for proceedings**

**21.** (1) A proceeding under this Act in respect of a trade union, employers' organization or occupational association may be taken in its name.

(2) An act or thing done or omitted by an employee, officer, director, official or agent of any person within the scope of his authority shall be deemed to be an act or thing done or omitted by that person.

1984-22-21.

**Technical and other matters**

**22.** (1) No proceeding under this Act is invalid by reason of any defect in form or any technical irregularity.

(2) Where there is a conflict between a provision of this Act and a provision of another enactment, this Act prevails.

1984-22-22.

**Delegation of powers**

**22.1** (1) The chairman may, in writing, delegate to one or more of the members of the council or to any other person any of his powers or duties under this Act, except the power of delegation under this section.

(2) A delegation under this section is revocable at will and does not prevent the exercise at any time by the chairman of a power so delegated.

(3) A delegation may be made subject to any terms the chairman considers appropriate.

(4) Where the chairman by whom a delegation is made ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until the delegation is revoked by a succeeding chairman.

(5) A person purporting to exercise a power of the chairman by virtue of a delegation under this section shall, when requested to do so, produce evidence of his authority to exercise the power.

1989-53-7.

***Offence Act***

**23.** Section 5 of the *Offence Act* does not apply in respect of this Act or the regulations.

1984-22-23.

**Regulations**

**24.** The Lieutenant Governor in Council may make regulations including but not limited to regulations prescribing the standards for the purpose of section 5.

1992-43-14.

**25.** [Spent. 1984-22-25.]

**26.** [Spent. 1984-22-26.]

**Transitional**

27. (1) Where, before this Act came into force, an allegation was referred by the minister to a board of inquiry under section 16 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, and the board of inquiry has not, on the day this Act came into force, disposed of the allegation, the board of inquiry shall continue to have the same power to inquire into, to make orders in respect of and to dispose of the allegation as it had before this Act came into force, and in relation to that allegation or an allegation referred to in subsection (2) of this section, sections 13, 17, 18, 21 and 24 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, shall, notwithstanding the repeal of that Act, remain in force.

(2) Where before this Act came into force an allegation was made orally or in writing to the director and there is no evidence that the allegation was received by the director under section 15 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, within 6 months after the date of the alleged contravention, the board of inquiry to which the allegation was referred by the minister has, notwithstanding section 23 of that Act or any decision of a court to the contrary, the same power to inquire into, to make orders in respect of and to dispose of the allegation as it would have had before this Act came into force had the allegation been received within 6 months after the date of the alleged contravention.

(3) Nothing in this Act affects an order made before this section came into force by a board of inquiry under section 17 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, and notwithstanding the repeal of that Act, section 24 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, shall remain in force in relation to that order.

1984-22-27.

**Commencement**

28. This Act comes into force by regulation of the Lieutenant Governor in Council.

1984-22-28.

[Note: Section 10 effective July 20, 1984, B.C. Reg. 231/84, Part II Gazette Vol. 27, p. 336. Sections 1 to 9 and 11 to 27 effective September 14, 1984, B.C. Reg. 282/84, Part II Gazette Vol. 27, p. 456.]

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# LEGAL PROFESSION ACT

## CHAPTER 255

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**Definitions****1** In this Act:

- “**applicant**” means a person who has applied under section 34 (3) for enrollment as an articulated student, for call and admission or for reinstatement;
- “**chair**” means a person appointed to preside at meetings of a committee or panel;
- “**conduct unbecoming a member of the society**” includes any matter, conduct or thing that is considered, in the judgment of the benchers or a panel,



Section 1

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- (a) to be contrary to the best interest of the public or of the legal profession, or
- (b) to harm the standing of the legal profession;

“costs” means costs assessed pursuant to a rule made under section 25 (2) (a);

“executive committee” means the committee appointed under section 24 (5);

“fiscal year” means the period beginning on January 1 and ending on December 31 in a year, or any other period that the benchers may establish in their rules;

“non-practising member” means a person to whom a non-practising membership certificate is issued under section 29 (4);

“officer” means the secretary, deputy secretary, assistant deputy secretary or other person appointed as an officer by the benchers;

“panel” means a panel established in accordance with section 59;

“practice of law” includes

- (a) appearing as counsel or advocate,
- (b) drawing, revising or settling
  - (i) a petition, memorandum or articles under the *Company Act*, or an application, statement, affidavit, minute, resolution, bylaw or other document relating to the incorporation, registration, organization, reorganization, dissolution or winding up of a corporate body,
  - (ii) a document for use in a proceeding, judicial or extra-judicial,
  - (iii) a will, deed of settlement, trust deed, power of attorney or a document relating to any probate or letters of administration or the estate of a deceased person,
  - (iv) a document relating in any way to proceedings under a statute of Canada or British Columbia, or
  - (v) an instrument relating to real or personal estate that is intended, permitted or required to be registered, recorded or filed in a registry or other public office,
- (c) doing any act or negotiating in any way for the settlement of, or settling, a claim or demand for damages,
- (d) agreeing to place at the disposal of another person the services of a barrister or solicitor,
- (e) giving legal advice,
- (f) the making of an offer to do anything referred to in paragraphs (a) to (e), and
- (g) the making of a representation by a person that the person is qualified or entitled to do anything referred to in paragraphs (a) to (e),

but does not include

- (h) any of those acts if it is not done for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed,

- (i) the drawing or preparing of an instrument by a public officer in the course of his or her duty,
- (j) the lawful practice of a notary public,
- (k) the usual business carried on by an insurance adjuster who is licensed under Division 2 of Part 6 of the *Financial Institutions Act*, or
- (l) agreeing to do something referred to in paragraph (d), if the agreement is made under a prepaid legal services plan or other liability insurance program;

“**practice year**” means the period beginning on January 1 and ending on December 31 in a year, or any other period that the benchers may establish in their rules;

“**respondent**” means a person whose conduct or competence is the subject of a citation directed to be issued under section 40 (8) or under review by the benchers under section 49 or 50;

“**retired member**” means a person to whom a retired membership certificate is issued under section 29 (4);

“**secretary**” means the secretary or acting secretary;

“**society**” means the Law Society of British Columbia continued under section 2;

“**suspension**” means temporary disqualification from the practice of law;

“**vice chair**” means a person appointed to preside at meetings of a committee in the absence of the chair.

## PART 1 – ORGANIZATION AND DUTIES

### Incorporation and membership

- 2 (1) The Law Society of British Columbia is continued.
- (2) All of the following are members of the society:
  - (a) barristers and solicitors who hold a practising certificate for the current practice year;
  - (b) retired members;
  - (c) non-practising members.
- (3) A member of the society admitted as a solicitor of the Supreme Court is an officer of all of the courts of British Columbia.

### Public interest

- 3 It is the object and duty of the society
  - (a) to uphold and protect the public interest in the administration of justice by
    - (i) preserving and protecting the rights and freedoms of all persons,
    - (ii) ensuring the independence, integrity and honour of its members, and

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- (iii) establishing standards for the education, professional responsibility and competence of its members and applicants for membership, and
- (b) subject to paragraph (a),
  - (i) to regulate the practice of law, and
  - (ii) to uphold and protect the interests of its members.

**Powers and capacity**

- 4 For the purposes of this Act, the society has all the powers and capacity of a natural person.

**Benchers**

- 5 The society is governed by the benchers who consist of the following:
- (a) the Attorney General;
  - (b) the members elected under sections 13 and 15 (1);
  - (c) the persons appointed under sections 6, 12 (2), 15 (3) and 17;
  - (d) the treasurer, deputy treasurer and assistant deputy treasurer.

**Lay benchers**

- 6
- (1) The Lieutenant Governor in Council may appoint not more than 3 persons to be benchers.
  - (2) The term of a bencher appointed under subsection (1) is 2 years coinciding with the term of a bencher elected under section 13.
  - (3) A bencher appointed under subsection (1) must not hold the position of assistant deputy treasurer, deputy treasurer or treasurer, but he or she has all the other rights and duties of an elected bencher.
  - (4) If a bencher appointed under subsection (1) ceases to hold office, a replacement may be appointed under that subsection to hold office for the balance of the term of the bencher whom he or she replaces.

**Committees of the benchers**

- 7 The treasurer may
- (a) appoint any person as a member of a committee of the benchers, and
  - (b) terminate the appointment.

**Life benchers**

- 8
- (1) A person who has served as a bencher for 4 complete or partial terms, whether consecutive or not,
    - (a) is not eligible to be elected or appointed as a bencher, and
    - (b) is a life bencher on leaving office as a bencher.
  - (2) Despite subsection (1), a bencher who is elected assistant deputy treasurer

## TEACHING PROFESSION ACT

## CHAPTER 19

*Assented to May 26, 1987.*

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**Interpretation****1. In this Act**

- "board" means a board of school trustees as defined by the *School Act*;
- "certified" means having received a certificate of qualification under this Act;
- "college" means the College of Teachers established by this Act;
- "council" means the council of the college;
- "hearing" means a hearing held in accordance with this Act for the purposes of an inquiry authorized by section 28;
- "letter of permission" means a letter from the college authorizing a person to give tuition or instruction without membership in the college or a certificate of qualification;
- "member" means a member of the college;
- "public school" means school as defined in the *School Act*;
- "register of members" means the register of members kept by the registrar under this Act.

1987-19-1; 1989-61-217.

**Incorporation and membership**

2. The College of Teachers is established as a corporation which, for the purposes of this Act, has all the powers and capacity of a natural person of full capacity.

1987-19-2.

**Membership**

3. (1) Membership of the college shall consist of
- (a) all persons who at the date of coming into force of this section held valid and subsisting certificates of qualification issued pursuant to the *School Act*,
  - (b) all persons employed by a board as superintendents of schools or assistant superintendents of schools at the date of coming into force of this section, and
  - (c) all persons admitted to membership by the council.
- (2) Where a person is a member under subsection (1) (a) or (b) no fees are payable for 30 days after the coming into force of this Act.
- (3) A member may resign from membership in the college at any time by giving written notice of his resignation to the registrar.

1987-19-3.

**Object**

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.

1987-19-4; 1992-69-1.

**Council**

5. The college shall be governed in accordance with this Act by a council consisting of the following:
- (a) 15 members elected to serve on the council under section 6;
  - (b) 2 persons appointed by the Lieutenant Governor in Council to hold office during pleasure;
  - (c) 2 persons appointed by the Minister of Education to hold office during pleasure;
  - (d) one person nominated jointly by the Deans of the Faculties of Education in the Province and appointed by the Minister of Education to hold office during pleasure.

1987-19-5.

**Zones**

6. (1) For the purpose of this Act, the Province is divided into 15 zones as set out in Column 1 of the Schedule to this Act, and each zone shall comprise the school districts set out opposite that zone in Column 2 of the Schedule.

(2) In each zone, one member shall be elected to serve on the council as the representative for that zone.

1987-19-6.

**Candidates**

7. A member is not eligible to be a candidate for election to the council as the representative of a zone unless

- (a) his chief place of employment by a board is in that zone, or if not employed by a board his principal residence is in that zone,
- (b) his nomination in writing is proposed by 10 members of the college each having his place of employment by a board in that zone or, if not employed by a board, having his principal residence in that zone, and
- (c) written consent of the member for the nomination has been filed with the registrar by April 15 of the year in which the election is to take place.

1987-19-7; 1993-72-1.

**No opposing nomination**

8. If in a zone there is only a single candidate nominated, the registrar shall declare that the candidate is elected as the council member for that zone.

1987-19-8.

**Elections and term of office**

9. (1) The college must hold elections for members of the council during the period October 14 to December 7 in 1993.

(2) The college must hold elections for members of the council during the period April 15 to June 7 in:

- (a) each odd numbered zone in the Schedule in 1995 and each odd numbered year thereafter, and
- (b) each even numbered zone in the Schedule in 1996 and each even numbered year thereafter.
- (3) The term of office of an elected member of council is
  - (a) to December 31, 1993 for members elected in 1991,
  - (b) from January 1, 1994 to July 31, 1995 for members elected in 1993 in each odd numbered zone in the Schedule,
  - (c) from January 1, 1994 to July 31, 1996 for members elected in 1993 in each even numbered zone in the Schedule, and
  - (d) for a 2 year term commencing on the August 1 following the election in 1995 or a subsequent year.

1993-72-2

10. [Repealed 1993-72-3.]

**Elections**

11. (1) Subject to subsection (2), the council may make bylaws that it considers necessary or advisable respecting the election of members of the council.

(2) At an election of a member of the council to represent a zone the vote shall be by secret ballot, of the members of the college having their place of employment by a board in that zone or, if not employed by a board, having their principal residence in that zone.

1987-19-11.

**By-elections**

**12.** (1) Where an elected council member ceases to hold office before he has served 18 months of his term, the council shall promptly hold an election to choose a successor.

(2) Section 11 (2) and the bylaws made under section 11 (1) apply to an election held under subsection (1) of this section.

(3) Where an elected council member ceases to hold office after he has served 18 months or more of his term, the council may appoint an eligible member from the same zone to fill the vacancy.

(4) A council member elected under subsection (1) or appointed under subsection (3) shall hold office for the remainder of the term of the member whom he replaces.

1987-19-12.

**Council members to be college members**

**13.** Where an elected council member ceases to be a member of the college, that council member ceases to hold office, and section 12 applies.

1987-19-13.

**Failure to elect**

**14.** In the case of failure at an election to elect from any zone the required council member, the council may appoint from the same zone an eligible member of the college to be a council member, and a member so appointed holds office as though he were elected at an election.

1987-19-14.

**Annual meeting**

**15.** (1) A meeting of the college shall be held at the time and place appointed by the council at least once in every calendar year and not more than 15 months after the last preceding annual meeting.

(2) If default is made in holding any annual meeting, the Supreme Court, on the application of a member of the college, may call or direct the calling of an annual meeting of the college.

(3) The council, at any time of its own motion, may call a meeting of the college.

(4) The council, on the written request of at least 5% of the members of the college or of 11 members of the council, shall call a meeting of the college, and the meeting shall be held within 6 weeks after receipt of the request by the registrar.

(5) The registrar shall, at least 21 days before any meeting of the college, send notice of the meeting by mail to every member in good standing at the member's address last recorded in the records of the college.

(6) The council may and, on the written request of at least 5% of the members of the college, shall take a vote of the members of the college by letter ballot, in the manner provided by the bylaws of the college, on any matter that under this Act or the bylaws can be voted on at a meeting of the college, and a vote so taken has the same force as if the vote had been taken at a meeting of the college.

1987-19-15.

**Council meetings**

**16.** The meetings of the council shall be held at the places and times determined by the council.

1987-19-16.

**Election of officers**

**17.** (1) In each year, other than in 1993, the persons who will be members of the council on August 1 of that year must, during June or July of that year, elect one of their number to be the chair to hold office and to be the head of the college for one year from that August 1.

(2) Despite subsection (1), the members of the council on January 1, 1994 must elect one of their number to be the chair and to hold office and be head of the college from the date of the election to July 31, 1994.

(3) A person may be elected as chair under this section for a second or subsequent term.

(4) If a chair is unable to assume office or the office becomes vacant, the council must elect another person who will be a member of the council over the term of the vacancy to be the chair for the remainder of that term.

(5) The council may fix the salaries or fees to be paid to persons elected under this section or appointed under section 18.

1993-72-4.

**Appointment of registrar**

**18.** (1) The council shall appoint from among the members a registrar of the college who shall hold office during the council's pleasure.

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

1987-19-18.

**Special meetings**

**19.** The chairman of the college or 5 council members may call a meeting of the council and shall give the members appropriate notice of such a meeting.

1987-19-19.

**Expenses**

**20.** 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.

1987-19-20.

**Service of documents**

**21.** 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 chairman, registrar or a deputy registrar of the college.

1987-19-21

#### General powers of the council

- 22.** The council shall, subject to this Act, govern and administer the affairs of the college and, without limiting the generality of this, may
- (a) employ persons it considers necessary for the conduct and management of the business of the college, and assign duties to them.
  - (a.1) appoint an employee of the college as an evaluator with authority to evaluate and decide whether persons making application for a certificate of qualification or for membership in the college have complied with this Act and the bylaws of the college,
  - (a.2) delegate to a committee of the college the authority set out in paragraph (a.1), either in addition to or in substitution for one or more evaluators appointed under that paragraph,
  - (a.3) 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 (a.1), or
    - (ii) a committee referred to in paragraph (a.2),
  - (b) 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,
  - (c) [Repealed 1993-72-5.]
  - (d) take action and incur expense it considers necessary for the promotion, protection, interest or welfare of the college,
  - (e) determine the wages and benefits of officers and employees of the college,
  - (f) establish and maintain a system of continuing teacher education, and
  - (g) approve for certification purposes the program of any established faculty of teacher education or school of teacher education.

1987-19-22; 1990-38-5; 1993-72-5.

#### Former members

- 22.1** Sections 23 (1) (c) and (k) and (2) (a), 28 (3) and (4), 29 (2), 30, 31 (1), 32 to 36, 39 and 40 apply to former members who hold certificates of qualification as if they were members.

1992-69-2.

#### Bylaws

- 23.** (1) The council may make bylaws not inconsistent with this Act or the *School Act*
- (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),

- (b) respecting the election of the council and the conduct of such elections,
- (c) respecting inquiries into the conduct of members and implementing the powers of the council and the discipline committee with respect to inquiries,
- (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.
- (d.1) respecting the issuance of certificates of qualification and classifying certificates of qualification into one or more types.
- (d.2) respecting the standards of fitness for the admission of persons as members of the college,
- (d.3) respecting the powers of the qualifications committee appointed under section 26,
  - (e) requiring fees to be paid to the college for membership, for the issue of certificates of qualification and for other purposes incidental to the purposes of the college, prescribing the amount of the fees and providing for the suspension of members who default in the payment of fees,
  - (f) respecting the implementation of the powers of the teacher education programs committee,
  - (g) respecting the conduct of any meetings of the council and any committees appointed by it and the procedures to be followed during elections of the council,
  - (h) respecting the determination of whether or not a person is a member in good standing of the college,
  - (i) giving effect to and implementing the powers of the council contained in this Act,
  - (j) providing forms to be used for the purposes of this Act, and
  - (k) respecting the costs of proceedings before the discipline committee including bylaws requiring members in respect of whom an adverse finding is made to pay all or part of those costs.
- (2) The council may make bylaws not inconsistent with this Act for the discipline of members, the commencement and conduct of hearings and all other related matters, and those bylaws
  - (a) shall provide for a written report by the discipline committee of the facts as found by the discipline committee and a written report to the council of the result of a hearing by the discipline committee, and
  - (b) may provide that if the members of the discipline committee holding the hearing are unanimous in their decision as to the nature of the disciplinary action to be imposed under section 34, they may exercise the disciplinary powers of council but the disciplinary power of suspension or expulsion shall not be exercised by the discipline committee without the consent of the respondent.
- (3) The fact that a council member is a member of the discipline committee does not prevent his sitting as a council member on the consideration of a report of the discipline committee.

1987-19-23; 1990-38-6; 1993-72-6.

**Ratification of bylaws**

24. (1) The registrar of the college shall file with the Deputy Provincial Secretary 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.

1987-19-24; 1990-38-7.

**Admission and certification of members and issue of letter of permission**

25. (1) The college shall not

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

(b) admit a person to membership unless the person

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

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

(2) The college shall issue a certificate of qualification to a person who is a member under section 3 (1) (a) or (b), whether or not the member resigns under section 3 (3).

(3) 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 such conditions on the permission to teach as the council considers appropriate.

(4) The fact that a member

(a) resigns from the college,

(b) ceases to be a member of the college for failure to pay fees, or

(c) fails to renew his membership in the college

does not have the effect of cancelling the member's certificate of qualification.

(5) A person to whom a letter of permission is issued under subsection (3) does not thereby become a member.

1987-19-25; 1990-38-8.

**Qualifications committee**

26. (1) The council shall appoint 2 council members to act as the chairman and vice chairman of a qualifications committee.

(2) All members of the council are entitled to sit on the qualifications committee and 3 members of the qualifications committee are a quorum.

(3) The qualifications committee may inquire into

(a) applications for admission and certification, and

(b) reinstatement of persons as members,

and for these purposes the qualifications committee

- (c) has the powers, protection and privileges of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*, and
  - (d) may request the registrar of the college or any member of the qualifications committee to make preliminary investigations.
- (4) Where an inquiry is held, the qualifications committee shall submit a written summary of its findings of fact and its recommendations to the council, which shall immediately
- (a) accept the findings and recommendations in whole or in part.
  - (b) conduct a further inquiry concerning the whole or any part not accepted by it and for these purposes has the powers, protection and privileges of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*, or
  - (c) refer all or any part of the findings and recommendations back to the qualifications committee for further consideration.
- (5) If a member of the qualifications committee ceases to be a council member he may, with the consent of the committee chair, continue to be a member of the qualifications committee for the purpose of completing any inquiry in which he has been involved.
- (6) The fact that a council member is a member of the qualifications committee does not prevent his sitting as a council member on the consideration of the committee's report.

1987-19-26; 1993-72-7.

**Teacher education programs committee**

27. (1) The council shall appoint 2 council members as the chairman and vice chairman of a teacher education programs committee.
- (2) All members of the council are entitled to sit on the teacher education programs committee and 3 members of the teacher education programs committee are a quorum.
- (3) The teacher education programs committee may
- (a) [Repealed 1993-72-8.]
  - (b) cooperate with the teacher education institutions in the design and evaluation of teacher education programs leading to certification by the college, and
  - (c) [Repealed 1993-72-8.]
  - (d) in cooperation with the qualifications and discipline committees, develop specific programs to assist individual teachers.
  - (e) [Repealed 1993-72-8.]

1987-19-27; 1993-72-6,8.

**Discipline committee and inquiry**

28. (1) The council shall appoint 2 council members to act as the chairman and vice chairman of a discipline committee.
- (2) All members of the council are entitled to sit on the discipline committee and 3 members of the discipline committee are a quorum.
- (3) After
- (a) the college has received, in respect of a member, a report from a board under section 16 of the *School Act*

- (i) where, under section 36 of the *School Act*, a teacher is entitled to apply to the minister for an investigation and no application has been made within the time permitted or if an investigation has been held it has been concluded, or
  - (ii) where a grievance has been taken in accordance with the terms of a collective agreement by the member and the grievance procedure has been concluded.
- (a.1) the college has received, in respect of a member or other person, a report from an authority under section 6.1 of the *Independent School Act*,
  - (b) the college has received a complaint in writing signed by 5 members about the conduct of a member, or
  - (c) the college has received a report from the registrar relating to the conduct of a member,

the council or discipline committee may, after considering the report or complaint, make or cause to be made a preliminary investigation into the conduct or competence of the member in respect of whom the report or complaint is made.

(4) The council or discipline committee may, whether or not it has conducted a preliminary investigation under subsection (3), inquire into the conduct or competence, or both, of any member in respect of whom a report or complaint referred to in subsection (3) is made.

(5) If a member of the discipline committee ceases to be a council member he may, with the consent of the committee chair, continue to be a member of the discipline committee for the purpose of completing any hearings in which he has been involved.

(6) For the purposes of subsection (3), the registrar may make reports in accordance with the directions of the council.

1987-19-28; 1988-46-56; 1989-61-218; 1992-69-3; 1993-72-7; 1994-21-22.

#### Citation

**29.** (1) An inquiry pursuant to section 28 shall be commenced by a citation issued at the direction of any 3 elected council members or the chairman of the discipline committee, and for the purposes of the inquiry the council or the discipline committee shall hold a hearing.

(2) A citation shall be served on the member to whom it relates and may be served personally on the member or by registered mail addressed to the member at his most recent address according to the records of the college.

(3) A citation to be served by registered mail shall be delivered to an office of the Canada Post Office for that purpose at least 14 days before the hearing.

(4) A citation served personally shall be served at least 10 days before the hearing.

(5) The citation shall state the nature of the acts or omissions, or both, to be inquired into.

1987-19-29.

#### Suspension pending hearing

**30.** (1) Where a citation of a member has been issued any 3 elected council members may, in accordance with the bylaws of the college, suspend the membership and certificate of qualification of the member pending the conclusion of the hearing.

(2) Notice of a suspension under subsection (1) shall be served on the suspended member as soon as possible by registered mail or personally, and where served by registered mail the service shall be deemed to have been made on the 14th day after the notice is delivered to an office of the Canada Post Office for that purpose.

(3) The council may, on cause being shown, rescind or vary a suspension made under subsection (1).

1987-19-30.

#### Conduct of hearing

31. (1) Where an inquiry is made pursuant to section 28 respecting a member, the member may appear personally or with counsel at the hearing.

(2) The discipline committee or the council may employ legal or other assistance they consider necessary for the purpose of a citation or a hearing.

(3) For the purposes of conducting the inquiry under section 28 (4), the council or discipline committee has the powers, protection and privileges of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.

1987-19-31.

#### Failure to attend

32. If the member fails to attend at the hearing, the council or the discipline committee may, on proof of service of the citation, proceed with the hearing and may, without further notice to the person cited, make a report of its findings or take other action it is authorized to take under this Act.

1987-19-32.

#### Action after hearing

33. The council or the discipline committee, if authorized by the bylaws made under section 23, may after a hearing, and for the purpose of determining whether to take action in respect of the member under section 34,

- (a) dismiss the citation,
- (b) determine whether a member has been guilty of professional misconduct or other conduct unbecoming a member of the college,
- (c) determine whether a member has incompetently carried out duties undertaken by him in his capacity as an employee of a board, or
- (d) make such other report to the council respecting the citation as they consider proper.

1987-19-33.

#### Action by council

34. (1) Where an adverse determination respecting a member is made under section 33 (b) the council may, by a resolution passed by the votes of a majority of the council members present at a duly constituted meeting of the council,

- (a) reprimand the member,
- (b) suspend the membership and certificate of qualification of the member for a fixed or indeterminate period, or
- (c) terminate the membership of the member in the college and cancel his certificate of qualification.

(2) Where an adverse determination respecting a member is made under section 33 (c) the council may, by a resolution passed by the votes of a majority of the council members present at a duly constituted meeting of the council,

- (a) suspend the membership and certificate of qualification of the member until the member has completed to the satisfaction of the council a course of study designated by the council,
- (b) suspend the membership and certificate of qualification of the member until the member has appeared before a board of examiners appointed by the council and has satisfied the board that he is competent to carry out his responsibilities as an employee of the board,
- (c) require that the member complete successfully a course of study designated by the council and, on his failure to complete the prescribed course to the satisfaction of the council, suspend the membership and certificate of qualification of the member for a fixed or indeterminate period,
- (d) require the member to appear, within a period of time designated by the council, before a board of examiners appointed by the council, and satisfy the board he is competent to carry out his responsibilities as an employee of the board and, on his failure to satisfy the board, suspend the membership and certificate of qualification of the member for a fixed or indeterminate period,
- (e) suspend the membership and certificate of qualification of the member until the member has appeared before a board of examiners appointed by the council and has satisfied the board that his competence to carry out his responsibilities as an employee of the board is not adversely affected by a physical or mental disability or addiction to alcohol or drugs, or
- (f) require the member to appear, within a period of time designated by the council, before a board of examiners appointed by the council and satisfy the board that his competence to carry out his responsibilities as an employee of the board is not adversely affected by a physical or mental disability or addiction to alcohol or drugs and, on his failure to satisfy the board that his competence to carry out his responsibilities as an employee of the board is not adversely affected by such disability or addiction, suspend the membership and certificate of qualification of the member for a fixed or indeterminate period.

(3) If the certificate of qualification of a former member is suspended, the former member may not apply for membership during the period of suspension of the certificate of qualification.

1987-19-34; 1992-69-4.

#### Action by registrar

35. In a case of reprimand, or of termination or suspension of the membership and suspension or cancellation of the certificate of qualification of a member or cessation of membership for any other cause, the registrar shall, unless otherwise notified by the council,

- (a) notify each board in the Province,
- (b) notify the Minister of Education, and
- (c) record the fact in the register of members.

1987-19-35.

**Effect of suspension**

- 36.** Suspension of membership and of a certificate of qualification of a member in the college has effect only for the purposes of
- (a) section 19 of the *School Act*, and
  - (b) other purposes the bylaws of the college specify.

1987-19-36, 1989-61-219

**Cancellation of a letter of permission**

- 37.** (1) The council may, for just and reasonable cause, cancel or suspend a letter of permission.

(2) Section 31 applies for the purposes of a proceeding under subsection (1) as though an inquiry under section 28 (4) were being conducted.

1992-69-5.

**Reinstatement**

- 38.** (1) On the application of a person who has ceased to be a member of the college the council may, by resolution passed by the vote of a majority of the council members voting on the resolution, restore the person to membership in the college on conditions that the council considers fit to impose by the resolution.

(2) Unless the council with the consent of the applicant otherwise directs, the registrar of the college shall give notice of reinstatement to each board in the Province, and to the Minister of Education.

(3) Notice in writing of an application for reinstatement shall be given by the applicant to such persons as the council or the registrar of the college directs, and the persons notified may appear before the council in person, with or without counsel, and be heard on the application.

1987-19-38.

**Appeals**

- 39.** A member may appeal to the Supreme Court any decision, determination or order of the qualifications committee, discipline committee or council, as the case may be, that affects him and, from a decision, determination or order of the Supreme Court, may appeal to the Court of Appeal with leave of a justice of that court.

1987-19-39.

**Register**

- 40.** The registrar of the college shall maintain a register of all members.

1987-19-40.

**Protection against actions**

- 41.** (1) No action for damages lies against the college or a member or against an officer or employee of the college, or against any other person, for anything done or omitted by him in good faith while acting or purporting to act on behalf of the college under this Act.



(2) The college shall indemnify any individual referred to in subsection (1) for any costs or expenses incurred by him in any legal proceedings taken against him for anything done or omitted by him in good faith while acting or purporting to act on behalf of the college under this Act.

1987-19-41.

42. [Repealed 1993-72-9.]

#### Regulations

43. The Lieutenant Governor in Council may make regulations requiring the submission to the minister of reports on

- (a) the financial affairs and administration of the college,
- (b) the performance of teachers and administrative officers, and
- (c) education matters generally,

and the regulations may delegate to the minister the power to make regulations or issue guidelines respecting those reports.

1987-19-43.

44 to 90. [Consequential amendments and transitionals. Spent. 1987-19-44 to 90.]

91. [Repealed 1993-72-9.]

[Note: Sections 1, 2, 4 to 8, 10, 11 (2), 42 and Schedule effective June 22, 1987 (B.C. Reg. 168/87). Sections 9, 11 (1), 12 to 41 and 43 effective November 20, 1987 and sections 3, 88 and 90 effective December 22, 1987 (B.C. Reg. 418/87). Sections 44 to 62, 64, 65 and 67 to 86 come into force on January 1, 1988. Sections 63, 66 and 87 come into force on June 30, 1988. Section 89 comes into force on October 15, 1987.]

## SCHEDULE

(Section 6)

Column 1 Zones	Column 2 School Districts
1 East Kootenay	1 Fernie 2 Cranbrook 3 Kimberley 4 Windermere 18 Golden 86 Creston-Kaslo
2 West Kootenay	7 Nelson 9 Castlegar 10 Arrow Lakes 11 Trail 12 Grand Forks 13 Kettle Valley
3 Okanagan	14 Southern Okanagan 15 Penticton 16 Keremeos 17 Princeton 19 Revelstoke 21 Armstrong-Spallumcheen 22 Vernon 23 Central Okanagan 77 Summerland
4 Mainline Cariboo	89 Shuswap 24 Kamloops 26 North Thompson 29 Lillooet 30 South Cariboo 31 Merritt
5 Fraser Valley	32 Hope 33 Chilliwack 34 Abbotsford 35 Langley 42 Maple Ridge-Pitt Meadows 75 Mission 76 Agassiz-Harrison
6 Surrey	36 Surrey
7 Delta-Richmond	37 Delta 38 Richmond
8 Vancouver	39 Vancouver

SCHEDULE

(Section 6)

Column 1 Zones	Column 2 School Districts
9 Metro	40 New Westminster 41 Burnaby 43 Coquitlam
10 South Coast	44 North Vancouver 45 West Vancouver 46 Sunshine Coast 47 Powell River 48 Howe Sound 49 Central Coast
11 North-Central	27 Cariboo-Chilcotin 28 Quesnel 55 Burns Lake 56 Nechako 57 Prince George
12 North	59 Peace River South 60 Peace River North 81 Fort Nelson 87 Stikine
13 South Island	61 Greater Victoria 62 Sooke 63 Saanich 64 Gulf Islands 65 Cowichan 66 Lake Cowichan
14 North Island	68 Nanaimo 69 Qualicum 70 Alberni 71 Courtenay 72 Campbell River 84 Vancouver Island West 85 Vancouver Island North
15 North Coast	50 Queen Charlotte 52 Prince Rupert 54 Bulkley Valley 80 Kitimat 88 Terrace 92 Nisga'a

1987-19-Sch.: 1993-72-10

## CHAPTER 44

## An Act Respecting Trinity Junior College

[Assented to 2nd April, 1969.]

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

- Short title. 1. This Act may be cited as the *Trinity Junior College Act*.
- Interpretation. 2. In this Act, unless the context otherwise requires,  
 "Board of Governors" means the Board of Governors of the College;  
 "College" means Trinity Junior College;  
 "Evangelical Free Church" means the Evangelical Free Church of America;  
 "President" means the President of Trinity Junior College.
- Society continued. 3. (1) Trinity Junior College heretofore incorporated under the *Societies Act* and the members from time to time of the Board of Governors are continued and hereby constituted a body corporate under the name "Trinity Junior College."
- Objects. (2) The objects of the College shall be to provide for young people of any race, colour, or creed the first two years of university education in the arts and sciences with an underlying philosophy and viewpoint that is Christian and to assist students to transfer to senior colleges and universities.
- (3) The General Conference of the Evangelical Free Church, meeting in annual session or in special session, at such time and place as the Conference shall determine, with duly appointed delegates from member churches, shall exercise general direction and sponsorship of the College.
- Suits and contracts. 4. The College may sue and be sued, and may contract and be contracted with in its corporate name.
- Financial. 5. The College may, subject to any conditions required by its by-laws,  
 (a) borrow or raise or secure the payment of money; and  
 (b) draw, make, accept, endorse, discount, execute, and issue promissory notes, bills of exchange, and other negotiable or transferable instruments; and  
 (c) mortgage or pledge any or all of its property to secure any sum or sums of money borrowed or any part of the purchase money of property, and may issue and sell or pledge bonds, debentures, and obligations in accordance with the by-laws of the College.

**Investments.** 6. The College may invest any of its funds in any way authorized so to do by the Board of Governors, and is not limited to investments authorized by law for trustees.

**Trust company.** 7. To the extent authorized to do so by its by-laws, the College may entrust any or all sum or sums of money belonging to the College to any trust company, to be held, controlled, administered, and dealt with by the trust company for such time and in such manner as the Board of Governors may from time to time direct.

**Directors.** 8. Wherever in the by-laws of the College there is a reference to the Board of Directors or to directors or to a director, the reference shall be deemed to be to the Board of Governors or the governors or a governor of the College, as the case may be.

**Powers and duties of governors.** 9. (1) The management and administration of the property, revenue, business, and affairs of the College shall be the responsibility of the Board of Governors.

(2) Subject to this Act and the by-laws of the College, the members of the Board of Governors may exercise all the powers of the College and are the members of the College.

(3) In the carrying-out of its powers and duties pursuant to this Act and the by-laws of the College, the Board of Governors is responsible to the Annual Conference of the Evangelical Free Church.

(4) The persons who, upon the coming into force of this Act, are members of the Board of Directors of Trinity Junior College shall be members of the Board of Governors of the College until their successors are elected or appointed.

(5) The members of the Board of Governors shall be elected, in accordance with the by-laws of the College, at the annual meeting of the Evangelical Free Church.

(6) The President is ex officio a member of the Board of Governors and of all committees thereof.

**By-laws.** 10. (1) The by-laws of Trinity Junior College, so far as not inconsistent with this Act, are the by-laws of the College.

(2) Nothing that is in conflict with this Act shall be included in the by-laws, and the by-laws shall not contain anything contrary to law.

(3) The Board shall cause to be filed with the Registrar of Companies a copy of the by-laws of the College and of every amendment thereto.

**Power to make by-laws.** 11. The Board of Governors may make by-laws for all purposes relating to the affairs, business, property, and objects of the College, and, without limiting the generality of the provisions of this Act or the *Societies Act* conferring powers upon the Board of Governors, the power of the Board of Governors to make by-laws extends to the following matters:—

(a) The operation of the College:

- (b) Meetings and transactions of the Board of Governors:
- (c) Appointment and membership of committees of the Board:
- (d) Holding, place, and conduct of meetings of the Board of Governors, and meetings of the College, the notices and consents prerequisite to such meetings, quorums, voting rights at meetings, and all other matters in connection with such meetings:
- (e) The filling of vacancies in the Board of Governors:
- (f) All matters relevant to the terms and conditions of employment of any employees or employee of the College and the termination thereof:
- (g) The remuneration, if any, of officers and employees of the College:
- (h) The exercise of borrowing powers:
- (i) The audit of accounts of the College:
- (j) The custody and use of the common seal of the College:
- (k) The establishment, levying, payment, remission, and collection of registration and any other fees and assessment deemed appropriate by the Board of Governors, the amounts thereof, and the requirements regarding payment thereof:
- (l) The authorization of courses of study, normally requiring completion of secondary school for admission:
- (m) The resolution of disputes arising out of the affairs of the College by arbitration under the *Arbitration Act* or otherwise; and
- (n) The conduct generally of the affairs of the College.

## Agreements.

12. The Board of Governors, on behalf of the College, may enter into any agreement or agreements with any university, college, or other institution of learning or with any person, body, or corporation, whether public or private, respecting and providing for co-operation in the exercise of any right, power, privilege, or function of the College.

## Meetings of Board of Governors.

13. (1) The Board of Governors shall meet at least three times in each calendar year, and at such other time or times as may be necessary in its discretion.

(2) The Board shall provide by by-law for the giving of not less than two weeks' written notice of every meeting thereof to each member of the Board.

(3) A quorum for a meeting of the Board of Governors shall be two-thirds of all the members thereof.

(4) The Board of Governors shall elect from among themselves a chairman, a secretary, and whatever other officers they may deem necessary. The chairman shall preside at all meetings of the Board.

## President and Dean.

14. The President and Dean of the College shall be appointed by the General Conference of the Evangelical Free Church upon the recommendation of the Board of Governors of the College.

Duties and powers of President.

15. The President shall be the chief executive officer of the College, and he shall supervise and direct the work of the College, the teaching and the administrative staff, and be responsible for student discipline.

Staff.

16. The Board of Governors, upon the recommendation of the President, may appoint the Dean of Students, the librarian, the registrar, the bursar, the professors, the lecturers, the instructors, and all such officers, clerks, and employees as may be deemed necessary for the purposes of the College, and define their duties and their tenure of office or employment.

College Council.

17. (1) There shall be a College Council comprising the President of the College, the Dean of the College, the Dean of Students, the business manager, and whatever other advisory members these three members may appoint, and the President shall be the chairman of the College Council.

(2) The College Council has power to

- (a) consider and determine all courses of study;
- (b) determine requirements for admission to the College;
- (c) recommend to the Board of Governors courses of instruction in the College;
- (d) receive and consider and make recommendations respecting all academic matters;
- (e) conduct examinations and appoint examiners;
- (f) award scholarships, medals, and prizes;
- (g) make rules and regulations respecting the conduct and activities of students;
- (h) publish the College calendar;
- (i) make rules and regulations for the conduct of its own affairs; and
- (j) make recommendations to the Board of Governors for the achievement of the objects and purposes of the objects and purposes of the College.

Liability exemption.

18. No member of the Board of Governors is, in his individual capacity, liable for any debt or liability of the College.

Contracts.

19. (1) Contracts on behalf of the College may be made as follows:—

- (a) Any contract that, if made between private persons, would be by law required to be in writing and under seal may be made on behalf of the College in writing under the common seal of the College, and may in the same manner be varied or discharged:
- (b) Any contract that, if made between private persons, would be by law required to be in writing, signed by the persons to be charged therewith, may be made on behalf of the College in writing signed by any person acting under its authority,

express or implied, and may in the same manner be varied or discharged; and

- (c) Any contract that, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the College by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(2) All contracts made, varied, or discharged according to this section shall, so far as concerns the form thereof, be effectual in law and binding on the College and all other parties thereto.

(3) A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of the College if made, accepted, or endorsed in the name of, or by or on behalf of, or on account of the College by any person acting under its authority, express or implied.

Taxation.

**20.** All property used for educational purposes whereof the College is the owner or a tenant is exempt from taxation under the *Municipal Act*, the *Public Schools Act*, and the *Taxation Act*.

Powers.

**21.** The College shall have perpetual succession and a common seal, and has power to acquire, by purchase, gift, devise, bequest, or otherwise, real and personal property within or without the Province, and may hold, sell, dispose of, exchange, mortgage, lease, let, improve, and develop any such property, and, without restricting the generality of the foregoing, may acquire in any way or ways aforesaid land and tenements for use and occupation as college buildings, offices, residences, gardens, and playing-fields, acquire and develop libraries, furniture, and equipment, and deal with any and all such property as empowered to do by this section.

Dissolution  
and  
winding-up.

**22.** (1) Upon dissolution or winding-up of the College, the assets of the College shall revert to the Evangelical Free Church of Canada.

(2) The provisions of the *Companies Act* relating to the winding-up of companies apply, mutatis mutandis, to the College, but whenever there is a reference therein to a special resolution, the reference shall be deemed to be to a resolution.



## CHAPTER 65

An Act to Amend the  
Trinity Junior College Act

[Assented to 30th March, 1972.]

- Preamble.** WHEREAS a petition has been presented for the amendment of the *Trinity Junior College Act*, and it is expedient to grant the prayer of the said petition:
- Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—
- Short title.** 1. This Act may be cited as the *Trinity Junior College Act Amendment Act, 1972*.
- Amends long title.** 2. The *Trinity Junior College Act*, being chapter 44 of the Statutes of 1969, is amended by striking out the long title thereof and substituting "An Act Respecting Trinity Western College".
- Amends s. 1.** 3. Section 1 of the Act is repealed and the following substituted:  
"This Act may be cited as the *Trinity Western College Act*".
- Amends s. 2.** 4. Section 2 of the Act is amended by striking out the word "Junior" in the fourth and seventh lines and substituting in each case the word "Western".
- Amends s. 3(1).** 5. Subsection (1) of section 3 of the Act is amended by striking out the word "Junior" in the first and fourth lines and substituting in each case the word "Western".
- Amends s. 10(1).** 6. Subsection (1) of section 10 of the Act is amended by striking out the word "Junior" in the first line and substituting the word "Western".
- Effect.** 7. The change of name effected by this Act does not affect any rights or obligations of the college heretofore incorporated under the name "Trinity Junior College", or render defective any legal proceedings by or against the College, and any legal proceedings that may have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.
- Commencement.** 8. This Act comes into force on the first day of July, 1972.

## CHAPTER 85

An Act to Amend the Trinity  
Western College Act[Assented to 21<sup>st</sup> October, 1977.]

- Preamble. WHEREAS a petition has been presented for the amendment of the *Trinity Western College Act*, and it is expedient to grant the prayer of the said petition;
- Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:
- Short title. 1. This Act may be cited as the *Trinity Western College Amendment Act, 1977*.
- s. 2. 2. The *Trinity Western College Act*, being chapter 44 of the Statutes of 1969, and amended in 1972, is amended by repealing section 2 of the Act and substituting the following:  
 "Advisory Council" means the Advisory Council appointed by the Board of Governors of Trinity Western College;  
 "Board of Governors" means the Board of Governors of the College;  
 "Chancellor" means the Chancellor of Trinity Western College;  
 "College" means Trinity Western College;  
 "Evangelical Free Church" means the Evangelical Free Church of Canada;  
 "President" means the President of Trinity Western College.
- s. 3 (2). 3. Subsection (2) of section 3 of the Act is amended by striking out the words "the first two years of" in the second line.
- s. 3 (3). 4. Subsection (3) of section 3 of the Act is repealed.
- s. 9 (3). 5. Subsection (3) of section 9 of the Act is amended by striking out the words "Annual Conference of the Evangelical Free Church" in the third line and substituting the word "College".
- s. 9 (5). 6. Subsection (5) of section 9 of the Act is amended by striking out the words "at the annual meeting of the Evangelical Free Church" in the second and third lines.
- s. 11. 7. Section 11 of the Act is amended by relettering paragraph (m) as paragraph (o) and adding the following:  
 (m) The appointment of a Chancellor of the College;

- s. 14. 8. Section 14 of the Act is amended by striking out the words "by the General Conference of the Evangelical Free Church upon the recommendation of the Board of Governors of the College" in the first, second and third lines and substituting the words "in accordance with the by-laws of the College".
- s. 16. 9. Section 16 of the Act is amended by adding immediately after the words "may appoint the" in the second line the words "Academic Dean,".
- s. 17. 10. Section 17 of the Act is repealed, and the following substituted:  
Advisory Council.
17. (1) There shall be an Advisory Council comprising the President of the College, the Chairman of the Board of Governors and whatever other advisory members those 2 members may appoint; provided that all such appointments shall be approved by the Board of Governors.
- (2) The Advisory Council shall provide expertise for the President and his staff in areas of College finance, management and development, and shall assist in furthering College objectives in such manner as may from time to time be prescribed by the Board of Governors.
- (3) The President shall be the Chairman of the Advisory Council.
- (4) The officers, term of membership and procedures respecting the Advisory Council shall be prescribed in the by-laws of the College.
- Commence-ment. 11. This Act comes into force on a date to be fixed by Royal Proclamation.

## CHAPTER 37

## An Act to Amend the Trinity Western College Act

[Assented to July 31, 1979.]

Preamble

WHEREAS a petition has been presented for the amendment of the Trinity Western College Act, and it is expedient to grant the prayer of the said petition:

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Short title

1. This Act may be cited as the Trinity Western College Amendment Act, 1979.

Amends s. 11

2. The Trinity Western College Act, being chapter 44 of the Statutes of 1969, and amended in 1972 and 1977, is amended by adding paragraph (p) in section 11 as follows:  
(p) A baccalaureate degree.

Commencement

3. This Act comes into force on a day to be fixed by proclamation.

## AN ACT TO AMEND THE TRINITY WESTERN COLLEGE ACT

## CHAPTER 63

*Assented to June 28, 1985.*

**Preamble**

WHEREAS a petition has been presented for the amendment of the *Trinity Western College Act*, and it is expedient to grant the prayer of the said petition:

THEREFORE, HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

**Short title**

1. This Act may be cited as the *Trinity Western College Act Amendment Act, 1985*.

**Amends s. 11**

2. Section 11 of the *Trinity Western College Act*, S.B.C. 1969, c. 44, as amended, is further amended by deleting "(p) a baccalaureate degree" and substituting the following:  
(p) a baccalaureate degree, a theological degree, and such other degrees as authorized by the Lieutenant Governor in Council following academic review by 3 qualified academics from other universities approved by the minister responsible for universities in British Columbia. The authority to grant graduate degrees shall be held in abeyance for 3 years following the coming into force of this Act.

**Amends College's name**

3. The name "Trinity Western College" is amended to "Trinity Western University" and the word "College" wherever it appears in sections 1 to 22 inclusive of the Act is amended to read "University".

**Amends s. 3 (2)**

4. The words "and to assist students to transfer to senior colleges and universities" appearing in section 3 (2) of the Act are deleted.

**Commencement**

5. This Act comes into force by regulation of the Lieutenant Governor in Council.