Court File No: 27168

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

B E T W E E N

THE BRITISH COLUMBIA COLLEGE OF TEACHERS

APPELLANT
(RESPONDENT)

AND:

TRINITY WESTERN UNIVERSITY and
DONNA GAIL LINDQUIST

RESPONDENTS
(PETITIONERS)

AND:

THE SEVENTH-DAY ADVENTIST CHURCH IN CANADA
THE CHRISTIAN FELLOWSHIP LEAGUE
EGALE CANADA INC.
ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION
THE CANADIAN CONFERENCE OF CATHOLIC BISHOPS
THE EVANGELICAL FELLOWSHIP OF CANADA
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATIONS
and THE CANADIAN CIVIL LIBERTIES ASSOCIATIONS

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FACTUM OF THE INTERVENER, THE CANADIAN CIVIL LIBERTIES ASSOCIATION

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FACTUM OF THE INTERVENER, THE CANADIAN CIVIL LIBERTIES ASSOCIATION

PART I – THE FACTS

1. The Canadian Civil Liberties Association (the "CCLA") was granted leave to intervene in this Appeal on April 28, 2000. The CCLA's factum focuses on the nature of the Appellant's jurisdiction, and on the appropriate test to be used by an administrative body such as the Appellant when making decisions in this context. The CCLA takes no position on the facts.

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PART II – POINTS IN ISSUE

2. The CCLA takes a position only on the following points in issue raised by the parties:

I. What is the nature of the Appellant's jurisdiction to consider and/or apply the *Charter*? and

II. If such jurisdiction exists, how should the *Charter* be applied in this context?

3. The CCLA takes no position on the applicable standard of review of the Appellant's decision, nor on the availability of an order in the nature of *mandamus*.

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I. JURISDICTION TO CONSIDER AND/OR APPLY THE *CHARTER*

4. It is the CCLA's position that the Appellant had jurisdiction to consider and apply the *Charter* in the exercise of its discretion whether to accredit the Respondent, both because it was required to consider the *Charter* rights of persons affected thereby before making its decision, and because its "public interest" jurisdiction required it to consider the *Charter* generally. In either case, it was required to balance the competing concerns of the religious freedom and associated rights of the Respondents with the potential for discriminatory effects, if any, in accrediting the Respondent Trinity Western University ("TWU").

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II. APPLICATION OF THE *CHARTER* IN THIS CONTEXT

5. There are two facets of TWU's policies which appear to have raised public interest concerns for the Appellant British Columbia College of Teachers (the "BCCT"):

(i) the perception arising from the "discriminatory practices" and "world view" embodied in TWU's *Code of Conduct* that TWU graduates will not uphold the values, beliefs and knowledge sought to be transmitted by the public school system; and

(ii) the concern that there is a risk that teachers educated at TWU may discriminate against their homosexual students.

6. With respect to the first facet, it is the CCLA's position that as a matter of religious freedom and associated rights, religious educational institutions which do not rely upon public funding, such as TWU, should be free to prefer admission to those persons who adhere to the institution's religious beliefs and values. Similarly, that institution may legitimately deny entrance to persons who do not adhere to these same beliefs and values. This should not generally lead to a denial of accreditation on the basis of "perception" alone.

7. With respect to the second facet, it is the CCLA's position that the appropriate test to assess whether a particular institution is an inappropriate environment for an accredited teacher education program is whether there is a *reasonable* apprehension that teachers trained in that program will treat students unfairly. A less rigorous test, as apparently applied by the BCCT, risks undermining the rights of the institution and its members without adequate justification.

PART III – ARGUMENT

I. JURISDICTION TO CONSIDER AND/OR APPLY THE *CHARTER*

(i) No Power to Make a Decision Infringing *Charter* Rights

8. The CCLA respectfully submits that the BCCT was entitled, and indeed required, to consider and apply the *Charter* because it was a tribunal invested under statute with an "imprecise discretion" as to whether to accredit TWU, which "must therefore be interpreted as not allowing *Charter* rights to be infringed". As such, before making its decision, the BCCT was at the very least required to consider whether its decision to deny accreditation would infringe the rights of TWU and its members.

***Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038, at 1078**

9. As set out below, the BCCT's denial of accreditation to TWU amounts to a *prima facie* violation of ss.2(a),(b) and (d) and s.15. Under *Slaight Communications*, however, the decision would still be permissible if justified under s.1. This required the BCCT to consider the countervailing interests at stake, and in particular those with a constitutional dimension. Hence, the BCCT was also required to consider the discriminatory impact, if any, of accreditation upon groups and individuals protected under s.15, and whether accreditation in these circumstances would be consonant with the values reflected in the *Charter*.

***Slaight Communications Inc. v. Davidson, supra*, at 1079**

10 ***R. v. Keegstra*, [1990] 3 S.C.R. 697, at 755-756, per Dickson C.J. and at 834-835, per McLachlin J. (as she then was) (dissenting)**

10. The CCLA submits that this jurisdiction was not dependent on the interpretation of the power in s.4 of the *Teaching Professions Act* to consider the "public interest", but rather flows from the fact that the BCCT was exercising a discretion under statute which could potentially infringe *Charter* rights. As long as the *Act* could be read as conferring upon the BCCT a power to infringe the *Charter*, the BCCT was under a legal duty to confine its decision to one within the range of possible exercises of discretion that did not infringe the *Charter* in a manner that could not be justified under s.1. It is only if the accreditation 20 decision could not be said to affect the *Charter* rights of any person that it becomes necessary to look at whether the "public interest" provision in s.4 specifically gave the BCCT jurisdiction to consider the *Charter* or its underlying values.

(ii) Consideration of the Public Interest Under s.4 of the *Teaching Professions Act*

1. Whether s.4 Grants Jurisdiction to Consider the *Charter*

11. In the alternative, the CCLA submits that s.4 of the *Teaching Professions Act*, which 30 mandates that the BCCT have regard to the public interest when certifying public school teachers and teacher education programs, entitled or even required the BCCT to consider *Charter* and human rights values as an integral aspect of the "public interest".

12. The CCLA agrees with the Appellant that the values reflected in the *Charter* and in the various human rights statutes cited by the Appellant are reflective of the public interest.

It was, therefore, appropriate for the BCCT to consider concerns about discrimination at TWU. However, as is discussed below, there is a corresponding obligation to consider all of the values enshrined in these enactments. The *Charter* and human rights legislation also indicate that freedom of religion and the right be free from discrimination on the basis of religious belief are central to the public interest.

13. The creation of administrative tribunals is a common feature in legislation throughout Canada and many of these tribunals are entrusted with jurisdiction to consider the "public interest". Indeed, in a great number of areas, administrative tribunals have a pre-eminent role in articulating and developing the "public interest" in Canada. Some 91 different federal statutes refer to the "public interest", of which 81 grant a power or impose a duty on an administrative body to consider the public interest in the exercise of their jurisdiction. These bodies range from the Governor-in-Council, through Ministers exercising statutory powers of decision, to Tribunals with either a broad mandate, like the CRTC, or a highly specific function, such as the Atomic Energy Control Board.

14. "Public interest" jurisdiction is equally widespread in provincial legislation. In the specific context of professional regulation (normally a matter of provincial law), many regulatory bodies appear to have some form of jurisdiction to consider the public interest in the exercise of their functions. To take Ontario as an example, teachers, architects, engineers, funeral directors, surveyors, and all of the health disciplines are governed by regulatory bodies invested with express "public interest" jurisdiction; while other professional regulatory bodies have been held to possess such jurisdiction by implication.

> ***Ontario College of Teachers Act*, 1996, S.O. 1996, c.12, s.3(2); *Architects Act*, R.S.O. 1990, c.A-26, s.2(2); *Professional Engineers Act*, R.S.O. 1990, c.P-28, s.2(3); *Funeral Directors and Establishments Act*, R.S.O. 1990, c.F-36, s16(3), 24(1), 41; *Surveyors Act*, R.S.O. 1990, c.S-29, s.2(2); *Regulated Health Professions Act*, 1991, S.O. 1991, c.18, s.3(2)**
>
> **Re Klein and the Law Society of Upper Canada, (1985) 16 D.L.R. (4th) 489 (Ont. C.J.)**

15. The CCLA respectfully submits that it would risk curtailing the development of the *Charter* to an unnecessary degree, to hold that the "public interest" did not embrace our legal system's foundational documents, when interpreted by an administrative tribunal that is considering a matter which is otherwise properly within its jurisdiction. It is from administrative tribunals that most Canadians will feel the impact of decisions concerning

the "public interest". It is at this level, therefore, that most Canadians will potentially be affected by the impact of the *Charter*, if the *Charter* indeed constitutes a statement of values that are part of the "public interest" as declared by Parliament and the Legislatures.

16. The CCLA submits that it advances the cause of civil liberties in Canada to recognize this kind of jurisdiction in administrative tribunals. For example, in *Weber v. Ontario Hydro*, this Court expressly recognized that the "*... practical import of fitting Charter remedies into the existing system of tribunals ... is that litigants have 'direct' access to Charter remedies in the tribunal charged with deciding their case*". The same "practical import" should inform the recognition of the jurisdiction of administrative tribunals to consider *Charter* and human rights values in the exercise of broad discretionary powers, even where not directly applying the *Charter* under s.52 or granting a *Charter* remedy under s.24.

***Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, at 962, per McLachlin J. (as she then was).**

***Douglas/Kwantlin Faculty Assn. v. Douglas College*, [1990] 3 S.C.R. 570, at 603-605, per LaForest, J.**

17. There appears to be little reported caselaw concerning the application of *Charter* or other constitutional values under broad powers to consider matters such as the "public interest". In one recent decision of the Ontario Divisional Court, *Lalonde v. Ontario (Hospital Restructuring Commission)*, it was held that the Commission "did not act according to law" when it "failed to comply with one of the fundamental organizing principles underlying the Constitution, namely the protection of minorities" in directing that Hôpital Montfort be closed and its delivery of services in French be transferred to the Ottawa General Hospital. The Court noted in particular the Commission's "broad authority to consider and determine the public interest", and the fact that Hôpital Montfort functioned as a "Francophone teaching milieu" as well as a treatment centre. The Court concluded as follows:

> *Given the constitutional mandate for the protection and respect of minority rights - an "independent principle underlying our constitutions", a "powerful normative force' [citing the Quebec Secession Reference, [1998] 2 S.C.R. 217] - it was not open to the Commission to proceed on a "restructured health services" mandate only, and to ignore the broader institutional role played by Hôpital Montfort as a truly francophone centre, necessary to promote and enhance the Franco-Ontarian identity as a cultural/linguistic minority in Ontario, and to protect that culture from*

assimilation. We find this is what the Commission did. Accordingly, its Directions cannot stand.

***Lalonde v. Ontario (Commission de Restructuration des Services de Santé*, (1999) 181 D.L.R. (4th) 263 (Ont. Div.Ct.), at 269-270, 277-279 and 298-299**

18. In a somewhat analogous case, this Court has recently held that an immigration officer was required to consider international conventions in determining whether humanitarian and compassionate grounds existed to avoid a deportation. Likewise, the British Columbia Court of Appeal has held that an arbitrator, when determining whether an employee was dismissed for "just cause", was entitled to consider whether her termination for refusing to process payments in relation to the delivery of abortion services on religious grounds violated her *Charter* rights under s.2(a) and (b). Finally, the Ontario Divisional Court has recently held that the Ontario Labour Relations Board gave inadequate consideration to the constitutional principle of independence of the judiciary when determining that judge's secretaries could be included in a bargaining unit without creating a "conflict of interest" within the meaning of Ontario's labour legislation.

***Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817**

***Moore v. British Columbia*, (1988) 50 D.L.R. (4th) 29 (B.C.C.A.); leave to appeal denied 50 D.L.R. (4th) vii (S.C.C.)**

***Ontario (A.G.) v. OPSEU*, (1999) 180 D.L.R. (4th) 549 (Ont.Div.Crt.); leave to appeal to Ont. C.A. granted January 18, 2000**

19. In the above cases, the Courts have held that administrative tribunals, acting within a broad and imprecise grant of discretion, can and should look to the *Charter* and human rights law as external sources of law which inform the content of that discretion. Indeed, administrative tribunals have been held to be entitled (if not required) to look to external sources of law that are relevant to their exercise of jurisdiction for many years, and routinely do so. While the fact that the *Charter* and human rights law is external to a tribunal's core jurisdiction may (or may not) indicate the standard of review to be applied, there is no reason in principle why the *Charter* or human rights law should be treated differently from other external sources of law for these purposes.

***CBC v. Canada (Labour Relations Board)*, [1995] 1 S.C.R. 157**

***Ontario Legal aid Plan v. O.P.S.E.U.*, (1991) 6 O.R. (3d) 481 (C.A.)**

***McLeod v. Egan*, [1975] 1 S.C.R. 517**

20. With respect, the interpretation of s.4 by the majority in the Court below as permitting the BCCT to examine only those aspects of the public interest that relate to "the establishment of the standards named in the section", or "teaching standards" in a technical sense, is unduly narrow and inconsistent with the authorities cited above. Contrary to the reasoning of the majority, it is not necessary for a tribunal to be given an express power to consider external sources of law that are relevant to its exercise of jurisdiction.

Reasons of Goldie J.A., *Appellant's Record*, Vol. III, p. 487, 489-490, 491

10 21. Further, since the early days of the *Charter*, this Court has recognized that even where the *Charter* does not apply directly, it is far from irrelevant. As Cory, J. stated in *Hill v. Scientology*, the *Charter* is "*a restatement of the fundamental values which guide and shape our democratic society*". Thus, in *Dolphin Delivery*, McIntyre, J. stated:

> *Where, however, private party "A" sues private party "B" relying on the common law, and where no act of government is relied upon to support the action, the Charter will not apply. I should make it clear, however, that this is a distinct issue from the question whether the judiciary ought to apply and develop the principles of the common law in a manner consistent with the fundamental values enshrined in the*
> 20 *Constitution. The answer to this question must be in the affirmative. In this sense, then, the Charter is far from irrelevant to private litigants whose disputes fall to be decided at common law.* [emphasis added]

***Hill v. Church of Scientology*, [1995] 2 S.C.R. 1130, at 1169**
***RWDSU v. Dolphin Delivery*, [1986] 2 S.C.R. 573, at 603**
***R. v. Salituro*, [1991] 3 S.C.R. 654, at 675**
***Hills v. Canada (A.G.)* [1988] 1 S.R.R. 513, at 558**

22. The CCLA submits that, in much the same way as the *Charter* has been held to be relevant to the development of the common law, it should be open to administrative
30 tribunals to consider the *Charter* and human rights legislation in formulating and applying the "public interest".

2. Duty to Consider all *Charter*/Human Rights Values

23. Assuming that it had jurisdiction to do so, however, the onus on the BCCT was to consider all aspects of the public interest and fashion a decision that appropriately balances countervailing *Charter* values. When entrusted with the power to consider the

public interest, it is not sufficient to pick and choose particular constitutional rights to consider and protect to the exclusion of others.

24. In *Dagenais*, this Court recognized the duty to balance rights not only when actually interpreting the *Charter* but also when developing the common law. Lamer, C.J. stated:

> *A hierarchical approach to rights, which places some over others, must be avoided both when interpreting the Charter and when developing the common law. When the protected rights of two individuals come into conflict ... Charter principles require a balance be achieved.* [emphasis added]

Dagenais v. CBC, [1994] 3 S.C.R. 835, at 877

25. In *R. v. Zundel*, a majority of this Court rejected an approach to interpreting the words "public interest", urged by the minority, that would have confined them to the values reflected in certain "fundamental" *Charter* rights including ss. 7, 15 and 27. The majority rejected this approach in part because the interpretation focussed "on a select range of *Charter* values, values which do not include freedom of expression".

> **_R. v. Zundel_, [1992] 2 S.C.R. 731, at 770, *per* McLachlin J. (as she then was); 805-806 *per* Cory and Iacobucci JJ. (dissenting)**

26. For the reasons set out above, these same principles should apply to administrative tribunals considering the public interest in accordance with those values reflected in the *Charter* and human rights legislation.

II. APPLICATION OF THE *CHARTER* IN THIS CONTEXT

27. The CCLA respectfully submits that the BCCT ought to have found that denial of accreditation in this context for the reasons it considered would constitute a *prima facie* violation of the Respondents' *Charter* rights, and then proceeded to consider whether such violation could be justified (and hence be permissible) in light of its concerns with the potential discriminatory effects of accreditation.

(i) Section 2(a) - Freedom of Conscience and Religion

28. The CCLA submits that the denial of accreditation in this context by the BCCT was *prima facie* a violation of the "freedom of conscience and religion" of TWU's students, and of TWU itself as a distinctly religious institution. The critical element is the basis upon

which accreditation is withheld from the institution. Where the reasoning focuses on the particular religious character of an institution and its members, it presumptively violates freedom of conscience and religion, subject to justification under s.1. Effectively, the BCCT has distinguished between TWU and other accredited institutions based upon TWU's and its members' religion.

29. As indicated, the reasons for withholding certification are the key consideration at issue here. It is one thing, for example to withhold such certification from all religious institutions on the grounds that a diversified milieu is better for teacher training. But it is another thing entirely to reject the program at a particular religious institution on the grounds that something is considered amiss with the religious doctrine that is promoted there. In the opinion of the Canadian Civil Liberties Association, the latter situation would be harder to justify than the former one.

30. The CCLA further submits that with respect to TWU's students, including the Respondent Donna Lindquist, denial of accreditation places upon them a burden, based on their religion, that is not borne by those who do not share their religious beliefs. For the reasons that Rowles J.A. (dissenting) would have found an infringement of Ms. Lindquist's s.15 rights, the CCLA submits that s.2(a) is also infringed:

> *In this case, the burden on students for attending the religious school of their choice would be the exclusion from the automatic certification process for teaching in the public schools. The Council's decision which would require public school teacher education training programs to conform to non-discriminatory standards thus would have a prima facie discriminatory impact on TWU students on the basis of their religion.*
>
> **Reasons of Rowles J.A. (dissenting), *Appellant's Record*, Volume III, pp. 575-576**

31. This Court has repeatedly held that a rule or law which places a burden on members of a particular religious group, that is not shared by non-members, may be considered to be an infringement of s.2(a).

***R. v. Big M Drug Mart*, [1985] 1 S.C.R. 295**

***R. v. Edwards Books*, [1986] 2 S.C.R. 713**

32. The CCLA notes that in the case of *Bob Jones University v. U.S.*, upon which the Appellant relied extensively in the Court below, the U.S. Supreme Court appears to have found a burden on the "free exercise" of religion, that would have violated the first amendment had there not been a compelling countervailing interest. That case concerned the denial of tax-exempt status to a private university on the basis that such status was not in the "public interest", because the university had a policy, based on genuine religious belief, against interracial dating and marriage. The Court found that any such burden on the free exercise of religion was justified by the compelling governmental interest in eradicating racial discrimination in education. The CCLA submits that similarly, the denial of accreditation to TWU was an infringement of s.2(a) that required justification under s.1.

***Bob Jones University v. US; Goldsboro Christian Schools* 461 U.S. 574, (1983), at 603-604**

(ii) Section 2(b) - Freedom of Thought, Belief, Opinion and Expression

33. Similarly, the CCLA submits that the BCCT's denial of accreditation, on the record before this Court, was based at least in part directly upon the BCCT's interpretation of the "particular world view" of TWU and its students, as manifested in the *Code of Conduct*. Whether or not the BCCT correctly interpreted that world view, the BCCT clearly acted on the basis of matters of religious "thought", "belief" or "opinion" (and its "expression" by TWU and its members in the *Code of Conduct*) in denying the application, being concerned that commitment to this "world view" would limit "consideration of social issues" and "may have a detrimental effect in the learning environment of public schools".

Reasons of Goldie J.A., *Appellant's Record*, Volume III, pp. 475-476

34. Presumptively, to deny a form of license on the basis that the applicant holds and has expressed a genuine religious belief should be regarded as an infringement of ss.2(a) and (b). For example, to withhold drivers' licenses from those who held and expressed particular religious views would clearly infringe these provisions. There may be circumstances in which such a denial is justified, because the particular belief can be shown to be relevant to the subject of the license, but that again should be a matter to be considered under s.1. Under this approach, the justification may be tested for adherence to constitutional principle, rather than being based upon mere assumptions.

(iii) Section 2(d) - Freedom of Association

35. The CCLA further submits that to the extent that TWU's and individual students' rights to freedom of conscience, religion, thought, belief, opinion and expression were infringed by the denial of accreditation, their freedom to associate in the exercise of these rights was also infringed. The ability to join together in the exercise of other fundamental freedoms is a particularly important aspect of s.2(d).

Reference Re Public Service Employee Relations Act, [1987] 1 S.C.R. 313, at 409, per McIntyre J.

Delisle v. Canada (Deputy Attorney General), [1999] 2 S.C.R. 989, at 1020

Caldwell v. Stuart [1984], 2 S.C.R. 603, at 626

(iv) Section 15 - Discrimination based on Religion

36. The CCLA adopts Rowles J.A.'s reasons and findings that the BCCT's decision discriminates against the individual Respondent, at pp. 575-576 of the Appeal Record, noted above. The CCLA further submits that the burden placed upon TWU students by the denial of accreditation is discriminatory, on the test recently set out in *Law v. Canada*, because it reflects presumed stereotypes about members of a particular religious group, that may be regarded as "discrete and insular", and thereby affects "the core of human dignity".

Reasons of Rowles J.A. (dissenting), _Appellant's Record_, Vol. III, p. 575-576

Law v. Canada, [1999] 1 S.C.R. 497

(v) Section 1 Analysis – Balancing Competing Interests

37. Thus, the question becomes whether these infringements may be justified as a reasonable limit under section 1 of the *Charter.* It is at this stage that the court should have consideration to balancing competing rights.

R. v. Oakes, [1986] 1 S.C.R. 103

R. v. RJR-MacDonald Inc., [1995] 3 S.C.R. 199

Ross v. School District No. 15, [1996] 1 S.C.R. 825

1. Pressing and Substantial Objective

38. The CCLA agrees that the BCCT's objective of seeking to "uphold values of non-discrimination in the classroom" is one which is pressing and substantial in a free and

democratic society. The CCLA further agrees with the Appellant that discrimination on the grounds of sexual orientation is "opprobrious", and falls within the core of those matters that s.15 was enacted to address.

Reasons of Rowles, J.A. (dissenting), *Appellant's Record*, Vol. III, p. 577

Appellant's Factum, paras. 52-56

2. Proportionality

39. The CCLA submits, however, that the denial of accrediting to TWU was not proportional to the objective in the circumstances of this case.

(i) Rational Connection

40. The CCLA agrees with Rowles J.A. that denying accreditation may be regarded as rationally connected to upholding values of non-discrimination in the public school system.

Reasons of Rowles J.A. (dissenting), *Appellant's Record*, Vol. III, p. 578-579

***Adler v. Ontario*, [1996] 3 S.C.R. 609, at 720**

(ii) Minimal Impairment

41. The CCLA submits that denial of accreditation did not "minimally impair" the *Charter* rights of TWU and its students, and hence is not justifiable under s.1. The CCLA submits that an appropriate balance between the religious freedom and associated rights of TWU and the BCCT's concerns with the discriminatory practices and world view of TWU, required a more objective and stringent test for measuring the possibility of harm arising from accreditation.

42. The BCCT has submitted that this harm arises from two sources: first, the alleged need for teachers to be perceived to uphold non-discriminatory values, and second, the risk that graduates of TWU will treat students of homosexual orientation or students who are struggling with their sexual identity in such a way as to discount their worth or identity.

The Issue of Perception

43. The BCCT argues that the perception that TWU graduates will not uphold the values, beliefs and knowledge sought to be transmitted by the school system was a

legitimate basis to deny accreditation, in light of the "public dimension" that is inherent in seeking regulatory approval for their program. The BCCT draws an analogy to *Bob Jones University v. U.S., supra*.

44. The CCLA respectfully submits that such perception is not reasonable in this context. Teachers come from a variety of backgrounds, and are shaped by a variety of influences. An individual teacher may emerge from entirely secular training (as presumably Malcolm Ross did), yet hold extreme and odious views, and express or act on them in such a way as to threaten the legitimate interests of students and employing school boards. Conversely, teachers may emerge from TWU with no discriminatory views, much less any propensity to act upon them.

45. A perception that fails to assess objective risks and individual circumstances provides an insufficient nexus between the means chosen and the objective to be realized. This is not consistent with this Court's approach to justifying the infringement of *Charter* rights.

46. The CCLA further submits that the *Bob Jones University* case turned upon considerations that are distinguishable from the present case. The direct and substantial benefit of tax exempt status (recognized by the Court as akin to taxpayer subsidies) may be regarded as a far more substantial form of government support than simply accrediting an institution for professional training purposes. Further, the "public interest" at stake there, in not offering government support to an educational institution with particular practices and views, is not the "public interest" asserted by the BCCT in this case. The BCCT claims only a public interest in avoiding the perception that TWU graduates will not be fit to teach.

***Bob Jones University, supra*, at 591-592**

47. In the context of accreditation of an institution for training purposes in Canada, the CCLA submits that the existence of discriminatory views and practices at the institution, based on genuine religious beliefs, should not render the institution ineligible in and of themselves, based merely upon "perceptions" about their graduates. Rather, there must

be an objective assessment of the risk that graduates of the institution will not treat their students fairly. In other words, there must be a *reasonable* apprehension of mistreatment, as set out below.

Assessment of Risk

48. The BCCT also justifies the denial of accreditation on the basis of concerns that the views of graduates of the program would have a detrimental effect on the learning environment of the school.

49. With respect, the problem with this justification is that in the absence of any objective standard or test that had to be met, it does not appropriately balance the rights of TWU and its students with the interest in upholding non-discriminatory values in the classroom.

50. The CCLA suggests that the appropriate test to employ in assessing whether a particular teacher education program is based in an inappropriate environment is as follows: **is there a reasonable apprehension that teachers trained in that program will be likely to treat students unfairly?** If the answer is yes, then accreditation ought to be denied, as it would be contrary to the public interest. However, if the answer is no, then certification ought not be denied on public interest grounds. This is the test that the CCLA submitted to be appropriate in *Ross*.

51. In *Ross*, the human rights tribunal had framed, and the Court accepted, a similar approach: "*... is it reasonable to anticipate that the respondent's off-duty conduct 'poisoned' the educational environment in the School Board*"? The CCLA submits that the reasonable apprehension of mistreatment test suggested here is generally similar to the reasonable anticipation approach endorsed in *Ross*.

***Ross, supra*, at 856**

52. It is important to stress that in *Ross*, the human rights tribunal found that there was, in fact, a poisoned environment in the school board. The tribunal did not merely assume that a poisoned environment may be created. The issue then was whether there was a

sufficient link between the actual poisoned environment and the respondent's off-duty conduct. In that case the tribunal found that there was a sufficient nexus and this Court agreed.

***Ross, supra*, at 854-856 and 881**

53. The test proposed by the CCLA would focus both on the program itself and on the overall institutional setting. In other words, the decision maker may consider whether there are elements of the teacher training program itself or in the overall setting, whether alone or in combination, that raise a reasonable apprehension that teachers trained in such a program will mistreat students.

54. The test is not simply whether the institution teaches a belief that may be repugnant to some. The test is whether it teaches a belief that is reasonably likely, on an objective standard to encourage its graduates to treat people unfairly (*i.e.* future public school students) who do not hold the same beliefs.

55. While many teachers, like other people, may have some individual preferences and prejudices (regardless of where they are trained), it should generally be presumed that they are nevertheless quite capable of being fair with those who do not belong to their respective groups or hold their religious beliefs. If individual teachers demonstrate that they are not capable of doing so, they may be subject to professional or employment discipline on an individual basis.

56. There may, however, be some institutions (whether religious or not) run by persons whose prejudices are so extreme that individuals who hold them could not be trusted to train teachers to hold an even hand in the classroom. Thus, it is conceivable that an institution which embodies these extreme prejudices, and serves to indoctrinate its graduates with them, could be found to be unworthy to be entrusted with a teacher education program from which graduates are automatically permitted to teach in the public school system. Whether religious or not, an institution that promotes the view that by virtue of membership in a particular group, persons should be treated as pariahs, or inferior or

incompetent, does not deserve such trust. In such a case, there would be a reasonable apprehension of mistreatment.

57. Where there is a reasonable apprehension of mistreatment, it would be contrary to the public interest to accredit a teacher education program from which graduates may automatically teach in the public school system. In other words, a denial of accreditation may be necessary to avoid the likely mistreatment.

58. On the facts of this case, however, the "reasonable apprehension of mistreatment" test would not be met. The mere fact that graduates of TWU chose or were compelled to adhere to the *Code of Conduct* during their time at TWU, whereby they committed to abstain from a range of conduct for religious reasons, does not give rise to a reasonable inference that they would be likely to treat students unfairly.

(iii) Deleterious Effects

59. The CCLA further submits that the deleterious effects of the denial of religious freedom and associated rights outweigh the benefits of the BCCT's decision.

III. CONSIDERATION OF *CHARTER*/HUMAN RIGHTS VALUES UNDER S.4 OF THE *ACT*

60. The CCLA submits that even if this Court decides that there is no *Charter* infringement and thus no section one analysis, the Court should review the BCCT's consideration of the public interest with a view to whether it made an appropriate attempt to balance the competing values at issue under its "public interest" jurisdiction. The proper approach for any decision maker in its consideration of the public interest is, where necessary, to fashion a balance (and not a hierarchy) between competing rights and interests.

61. This Court's decision in *Dagenais* mandates that, where *Charter* values are in conflict, a balancing must be reached even where the *Charter* does not directly apply. In that case, the Court was considering the conflict created between imposing a publication ban to protect an accused right to a fair trial versus the implicit denial of freedom of expression occasioned by a publication ban. As a result of *Dolphin Delivery*, the *Charter*

did not apply directly. Nevertheless, Lamer, C.J. constructed a modified common law rule to be used to determine whether a publication ban should be imposed. The rule was specifically designed to be in line with *Charter* principles.

***Dagenais, supra*, at 878**

62. In a case such as the present one, the CCLA suggests an approach similar to that set out in *Dagenais* ought to have been employed by the BCCT in the face of competing rights and interests. This approach would ask the following questions, parallel to the s.1 analysis above:

(i) was the public interest in avoiding perceptions arising from the "discriminatory practices" and "world view" of TWU sufficient to justify the denial of accreditation, in light of the countervailing public interest in allowing religious freedom; and

(ii) was a denial of accreditation necessary to prevent a reasonable risk that public school students would be treated unfairly by TWU graduates?

Discriminatory Practices and the Issue of Perception

63. Generally, discriminatory practices or views of an educational institution will run counter to the public interest. However, this general proposition is not unimpeachable, particularly where the educational institution is religiously based. There are some purely religious organizations whose restrictive views and policies should not offend public policy. Very simply, we should not condemn restrictions within the framework of organizations whose purposes and programs reflect a commitment to religious self-perpetuation. A tolerant democratic community is comfortable with a multitude of diverse cultures flourishing within its boundaries.

64. Where the pattern of enrollment in a religiously based school reflects such commitments, there is a countervailing public interest to the public interest in avoiding "perceptions" arising from discriminatory practices that was considered by the BCCT. This is clear from ss.2(a), (b) and (c) and s.15 of the Charter, and from section 19 of the British Columbia *Human Rights Act*, which permits religious organizations to prefer members of its religion. In *Caldwell v. Stuart*, this Court explained that this latter provision is not merely

a limiting section but it also confers and protects rights. McIntyre J. adopted Seaton J.A.'s formulation:

> *In a negative sense, section 22 [now 19] is a limitation on the rights referred to in other parts of the Code. But in another sense, it is a protection of the right to associate. Other sections ban religious discrimination; this section permits the promotion of religion.* [emphasis added]

***Caldwell v. Stuart, supra*, at 628**

10 65. This section is, therefore, an important aspect of the public interest in British Columbia. McIntyre J. found that, in enacting this section, the Legislature of British Columbia made a conscious choice to protect the rights of institutions like TWU to show preferences. Thus, TWU's "discriminatory practices" and "world view" should not automatically be seen as a contravention of the public interest. Quite the opposite, this kind of preference is in accordance with a stated public interest – the public interest is served by permitting religions to be free to maintain and perpetuate their membership. To be sustainable, religious schools are able to discriminate by denying admission to persons who have differing values and beliefs.

***Caldwell v. Stuart, supra*, at 628**

20

66. The entitlement to exclude may appear repugnant to individuals who hold different views. Nevertheless, this exclusion does not necessarily run counter to the public interest.

***Human Rights Act*, R.S.B.C. 1979, c.185.5, s. 19**

Caldwell v. Stuart, supra

67. The Appellant BCCT states that it was not applying or interpreting the *Charter* or human rights legislation. Instead, the BCCT argues that it considered the apparently discriminatory practices and world view of TWU only in relation to the public interest – that these enactments were used only as a guide for assessing the potential impact of TWU's
30 discriminatory practices. However, in doing so, it seems to have ignored the clearly stated public interest in maintaining a climate in which religious groups can flourish by permitting religious groups to show preferences for those who adhere to their beliefs.

Appellant's Factum, para. 63

68. The establishment of educational institutions founded upon the group's religious beliefs and values is one mechanism for maintaining and perpetuating membership in a religion. This was recognized in *Caldwell v. Stuart*. As well, in *Big M Drug Mart*, Dickson J. accepted that "... *the right to manifest religious belief by worship and practice or by teaching and dissemination*" forms part of the essence of the right to freedom of religion [emphasis added].

Caldwell v. Stuart, supra

***Big M Drug Mart, supra*, at 336**

10 69. There does not appear to be any dispute that some fundamentalist Christian belief considers homosexual conduct a sin, along with other conduct that may implicate *Charter* values, such as cohabiting outside of marriage. There is also no dispute that this is a genuine and sincere religious belief. Thus, TWU, as an educational institution mandated to foster fundamentalist Christian belief, is entitled to require students who choose to attend to refrain from behaviour that is not in accordance with its beliefs and values. Unless religious institutions can exclude non-adherents, religious and cultural pluralism would be impossible, and minority religions would be particularly vulnerable.

***Ross, supra*, at 868**

***R. v. Jones*, [1986] 2 S.C.R. 284, at 295**

20 ***Miron v. Trudel*, [1995] 2 S.C.R. 418**

70. For the reasons set out above under the section one test, the CCLA submits that when these public interests are appropriately balanced, they do not permit the denial of accreditation to TWU based upon mere "perception" arising from TWU's discriminatory practices and world view. Rather, they require an objective assessment of the risk of unfair treatment of students by TWU graduates.

Risk of Unfair Treatment of Students by Graduates

71. The second aspect of the "public interest" analysis was to assess whether
30 accrediting TWU's teacher education program entails an objective and real risk to students' rights to attend public schools free from unfair treatment by their teachers. Essentially, this is equivalent to the analysis under the traditional section one test outlined at paragraphs 47 to 57 above. For the reasons set out above, the CCLA respectfully submits that the

BCCT did not appropriately balance the public interest considerations in assessing this risk.

PART IV - SUMMARY OF POSITION

72. The CCLA respectfully submits:

(a) that the BCCT had jurisdiction to consider the *Charter*, either because it was exercising a discretion that could infringe *Charter* rights, or as an aspect of the "public interest";

(b) that the BCCT's decision infringed s.2 and s.15 of the *Charter*, and was not justified under s.1 because, on the basis of the grounds invoked, there could be no reasonable apprehension that TWU graduates would be likely to treat students unfairly; or

(c) alternatively, the appropriate balance of competing public interests militated against BCCT's decision, in the absence of a reasonable apprehension that TWU graduates would be likely to treat students unfairly.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at the City of Toronto in the Province of Ontario, this 15th day of June, 2000.

"Andrew K. Lokan"

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PART V – TABLE OF AUTHORITIES

PART VI – TABLE OF STATUTORY AUTHORITIES

Human Rights Act, R.S.B.C. 1979, c.185.5, s. 19

19. (1) Before making its decision on an application or rescinding approval of a plan pursuant to section 17 or 18, the Canadian Human Rights Commission shall afford each person directly concerned with the matter an opportunity to make representations with respect thereto. Restriction on deeming plan inappropriate

(2) For the purposes of sections 17 and 18, a plan shall not, by reason only that it does not conform to any standards prescribed pursuant to section 24, be deemed to be inappropriate for meeting the needs of persons arising from disability.

Ontario College of Teachers Act, 1996

S.O. 1996, Chap. 12; Sections 1 to 17, 40 to 61, 64(9), 68 and 69 proclaimed in force July 5, 1996; ss. 62 and 63 proclaimed in force April 4, 1997; ss. 18 to 39, 64(1) to (8), 64(10) to (12) and 65 to 67 proclaimed in force May 20, 1997; remainder to come into force on proclamation

2. (1) The College is established under the name Ontario College of Teachers in English and Ordre des enseignantes et des enseignants de l'Ontario in French.

3. (1) The College has the following objects:

1. To regulate the profession of teaching and to govern its members.
2. To develop, establish and maintain qualifications for membership in the College.
3. To accredit professional teacher education programs offered by post-secondary educational institutions.
4. To accredit ongoing education programs for teachers offered by post-secondary educational institutions and other bodies.
5. To issue, renew, amend, suspend, cancel, revoke and reinstate certificates of qualification and registration.
6. To provide for the ongoing education of members of the College.
7. To establish and enforce professional standards and ethical standards applicable to members of the College.
8. To receive and investigate complaints against members of the College and to deal with discipline and fitness to practise issues.
9. To develop, provide and accredit educational programs leading to certificates of qualification additional to the certificate required for membership, including but not limited to certificates of qualification as a supervisory officer, and to issue, renew, amend, suspend, cancel, revoke and reinstate such additional certificates.
10. To communicate with the public on behalf of the members of the College.
11. To perform such additional functions as are prescribed by the regulations.

(2) In carrying out its objects, the College has a duty to serve and protect the public interest.

Architects Act, R.S.O. 1990, Chap. A.26

2. (1) The Ontario Association of Architects, a body corporate, is continued as a corporation without share capital under the name Ontario Association of Architects in English and Ordre des architectes de l'Ontario in French. 1984, c. 12, s. 2(1), revised.

(2) The principal object of the Association is to regulate the practice of architecture and to govern its members, holders of certificates of practice and holders of temporary licences in accordance with this Act, the regulations and the by-laws in order that the public interest may be served and protected.

(3) For the purpose of carrying out its principal object, the Association has the following additional objects:
1. To establish, maintain and develop standards of knowledge and skill among its members.
2. To establish, maintain and develop standards of qualification and standards of practice for the practice of architecture.
3. To establish, maintain and develop standards of professional ethics among its members.
4. To establish and maintain or to assist in the establishment and maintenance of classes, schools, exhibitions or lectures in, and to promote public appreciation of, architecture and the allied arts and sciences.
5. To perform such other duties and exercise such other powers as are imposed or conferred on the Association by or under any Act.

3. (1) The Council of the Association is continued and shall be the governing body and board of directors of the Association and shall manage and administer its affairs.

Professional Engineers Act, R.S.O. 1990, Chap. P.28

2. (1) The Association of Professional Engineers of the Province of Ontario, a body corporate, is continued as a corporation without share capital under the name of Association of Professional Engineers of Ontario in English and Ordre des ingénieurs de l'Ontario in French. 1984, c. 13, s. 2(1), revised.

(3) The principal object of the Association is to regulate the practice of professional engineering and to govern its members, holders of certificates of authorization, holders of temporary licences and holders of limited licences in accordance with this Act, the regulations and the by-laws in order that the public interest may be served and protected.

(4) For the purpose of carrying out its principal object, the Association has the following additional objects:
1. To establish, maintain and develop standards of knowledge and skill among its members.
2. To establish, maintain and develop standards of qualification and standards of practice for the practice of professional engineering.
3. To establish, maintain and develop standards of professional ethics among its members.
4. To promote public awareness of the role of the Association.
5. To perform such other duties and exercise such other powers as are imposed or conferred on the Association by or under any Act.

3. (1) The Council of the Association is continued and shall be the governing body and board of directors of the Association and shall manage and administer its affairs.

6. In addition to his or her other powers and duties under this Act, the Minister may,
(a) review the activities of the Council;

(b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;

(c) advise the Council with respect to the implementation of this Act and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures. 1984, c. 13, s. 6.

7. (1) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations,

19. respecting the advertising of the practice of professional engineering;
20. prescribing a code of ethics;
21. defining professional misconduct for the purposes of this Act;

Funeral Directors and Establishments Act, R.S.O. 1990, Chap. F.36

3. (1) The Board of Funeral Services is continued as a corporation without share capital under the name Board of Funeral Services in English and Conseil des services funéraires in French. 1989, c. 49, s. 3(1), revised.

(2) The principal object of the Board is to regulate the practices of funeral directors and persons who operate funeral establishments and transfer services in accordance with this Act, the regulations and the by-laws in order that the public interest may be served and protected.

16. (1) The Discipline Committee shall,
(a) when so directed by the Board, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against a funeral director;
(b) hear and determine matters referred to it by the Board, Registrar, Executive Committee or Complaints Committee under this Act with respect to funeral directors; and
(c) perform such other duties as are assigned to it by the Board.

(2) A funeral director may be found guilty of professional misconduct by the Discipline Committee if,
(a) the funeral director has been found guilty of an offence that is relevant to the funeral director's suitability to practise as a funeral director, upon proof of such conviction; or
(b) the funeral director has been guilty in the opinion of the Discipline Committee of professional misconduct as prescribed.

(3) The Discipline Committee may find a funeral director to be incompetent if in its opinion,
(a) the funeral director has displayed in the providing or in directing the providing of funeral services or funeral supplies or in performing or supervising the performing of an embalming, a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates the funeral director is unfit to continue as a funeral director;
(b) the funeral director is suffering from a physical or mental condition or disorder of a nature and extent that makes it desirable in the interest of the public that the funeral director no longer be permitted to continue as a funeral director.

24. (1) If the Registrar proposes to suspend or revoke a licence, the Registrar may, if the Registrar considers it to be necessary in the public interest, by order, temporarily suspend the licence and the order shall take effect immediately.

41. (1) If the Director has reasonable and probable grounds to believe that a licensee is doing or is about to do something that will jeopardize the public interest, the Director may direct any person holding, having on deposit or controlling assets of the licensee or trust funds under the control of the licensee to hold the assets or trust funds until further instructions are received from the Director to release a particular asset or trust fund from the direction.

Surveyors Act, R.S.O. 1990, Chap. S.29

2. (1) The Association Of Ontario Land Surveyors is continued as a corporation without share capital under the name Association of Ontario Land Surveyors in English and Ordre des arpenteurs-géomètres de l'Ontario in French. 1987, c. 6, s. 2(1), revised.

(2) The principal object of the Association is to regulate the practice of professional land surveying and to govern its members and holders of certificates of authorization in accordance with this Act, the regulations and the by-laws in order that the public interest may be served and protected.

(3) For the purpose of carrying out its principal object, the Association has the following additional objects:
1. To establish, maintain and develop standards of knowledge and skill among its members.
2. To establish, maintain and develop standards of qualification and practice for the practice of professional land surveying.
3. To establish, maintain and develop standards of professional ethics among its members.
4. To promote public awareness of the role of the Association.
5. To perform such other duties and exercise such other powers as are imposed or conferred on the Association by or under any Act.
1987, c. 6, s. 2(2, 3).

3. (1) The Council of the Association is continued and shall be the governing body and board of directors of the Association and shall manage and administer its affairs.

6. In addition to his or her other powers and duties under this Act, the Minister may,
(a) review the activities of the Council;
(b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;
(c) advise the Council with respect to the implementation of this Act and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures.
1987, c. 6, s. 6.

7. (1) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations,

19. respecting the advertising of the practice of professional land surveying;
20. prescribing a code of ethics;
21. defining professional misconduct for the purposes of this Act;

Regulated Health Professions Act, 1991

S.O. 1991, Chap. 18; Sections 1(1), 7 to 10, 11(1)(c), 14 to 17 and 38 proclaimed in force August 1, 1992; ss. 1(2), 2 to 6, 11(1)(a), (b), (d), (e) and (2), 12, 13, 18 to 37, 39 to 45, 46(1), 47 to 50, Table items 1 to 5 and 7 to 16 and Schs. 1 and 2

proclaimed in force December 31, 1993; remainder to come into force on proclamation

Amended 1993, c. 37; proclaimed in force December 31, 1993
Amended 1996, c. 1, Sch. G, s. 27; proclaimed in force May 27, 1996
Amended 1998, c. 18, Sch. G, ss. 1 to 23 (s. 9 am. to Fr. version); proclaimed in force February 1, 1999 (Ont. Gaz., Vol. 132-6, February 6, 1999)
Administered by the Ministry of Health

SCHEDULE 1
SELF GOVERNING HEALTH PROFESSIONS

Health Profession Acts	Health Profession
Audiology and Speech-Language Pathology Act, 1991	Audiology and Speech-Language Pathology
Chiropody Act, 1991	Chiropody
Chiropractic Act, 1991	Chiropractic
Dental Hygiene Act, 1991	Dental Hygiene
Dental Technology Act, 1991	Dental Technology
Dentistry Act, 1991	Dentistry
Denturism Act, 1991	Denturism
Dietetics Act, 1991	Dietetics
Massage Therapy Act, 1991	Massage Therapy
Medical Laboratory Technology Act, 1991	Medical Laboratory Technology
Medical Radiation Technology Act, 1991	Medical Radiation Technology
Medicine Act, 1991	Medicine
Midwifery Act, 1991	Midwifery
Nursing Act, 1991	Nursing
Occupational Therapy Act, 1991	Occupational Therapy
Opticianry Act, 1991	Opticianry
Optometry Act, 1991	Optometry
Pharmacy Act, 1991	Pharmacy
Physiotherapy Act, 1991	Physiotherapy
Psychology Act, 1991	Psychology
Respiratory Therapy Act, 1991	Respiratory Therapy

SCHEDULE 2
HEALTH PROFESSIONS PROCEDURAL CODE

Note: This Code is deemed by section 4 of the Regulated Health Professions Act, 1991 to be part of each health profession Act

Objects of College

3. (1) The College has the following objects:
1. To regulate the practice of the profession and to govern the members in accordance with the health profession Act, this Code and the Regulated Health Professions Act, 1991 and the regulations and by-laws.
2. To develop, establish and maintain standards of qualification for persons to be issued certificates of registration.
3. To develop, establish and maintain programs and standards of practice to assure the quality of the practice of the profession.
4. To develop, establish and maintain standards of knowledge and skill and programs to promote continuing competence among the members.
5. To develop, establish and maintain standards of professional ethics for the members.
6. To develop, establish and maintain programs to assist individuals to exercise their rights under this Code and the Regulated Health Professions Act, 1991.
7. To administer the health profession Act, this Code and the Regulated Health Professions Act, 1991 as it relates to the profession and to perform the other duties and exercise the other powers that are imposed or conferred on the College.
8. Any other objects relating to human health care that the Council considers desirable.

Duty

(2) In carrying out its objects, the College has a duty to serve and protect the public interest.

Council

4. The College shall have a Council that shall be its board of directors and that shall manage and administer its affairs.

Committees

10. (1) The College shall have the following committees:
1. Executive Committee.
2. Registration Committee.
3. Complaints Committee.
4. Discipline Committee.
5. Fitness to Practise Committee.
6. Quality Assurance Committee.
7. Patient Relations Committee.

Appointment

(2) The Council shall appoint the members of the committees. 1991, c. 18, Sch. 2, s. 10(1,2).

Court File No. 27168

IN THE SUPREME COURT OF CANADA
(On Appeal from the Court of Appeal for the Province of Ontario)

B E T W E E N :

THE BRITISH COLUMBIA COLLEGE OF TEACHERS

Appellant
(Respondent)

- and -

TRINITY WESTERN UNIVERSITY and DONNA GAIL LINDQUIST

Respondents
(Petitioners)

- and -

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

(Interveners)

FACTUM OF THE INTERVENER, CANADIAN CIVIL LIBERTIES ASSOCIATION

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