

**IN THE SUPREME COURT OF CANADA
(On Appeal from the Court of Appeal for Saskatchewan)**

B E T W E E N:

THE SASKATCHEWAN HUMAN RIGHTS COMMISSION

Appellant
(Respondent)

-and-

WILLIAM WHATCOTT

Respondent
(Appellant)

-and-

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PART I OVERVIEW AND FACTS

1. The Canadian Unitarian Council (the “CUC”), is the national association of Unitarian and Unitarian Universalist congregations in Canada. The Unitarian Congregation of Saskatoon (the “UCS”) is a member congregation of the CUC. The CUC and the UCS (collectively, the “Unitarian Denomination”) were jointly granted leave to intervene in this appeal of the decision by the Saskatchewan Court of Appeal,¹ pursuant to the order of Justice Abella dated June 10, 2011.
2. This appeal raises issues regarding the balancing of the freedom of expression, the freedom of religion and the right to equality found within the *Canadian Charter of Rights and Freedoms* (the “Charter”).² The Unitarian Denomination is well situated to make submissions in this regard. Of the principles that Unitarianism affirms and promotes,³ four are most relevant to the outcome of this Appeal:
 - (a) The inherent worth and dignity of every person;
 - (b) Justice, equity, and compassion in human relations;
 - (c) A free and responsible search for truth and meaning; and
 - (d) The right of conscience and the use of the democratic process within our congregations and in society at large.
3. The Unitarian Denomination submits that the Court of Appeal Decision incorrectly insulated religious expression from consequences under s. 14(1)(b) of the *Saskatchewan Human Rights Code*, S.S. 1979, c. S-24.1, as amended (the “Code”). Moreover the Court of Appeal applied prejudicial contextual factors in its analysis, resulting in unequal treatment of sexual orientation as an enumerated ground under the *Code*.
4. The Unitarian Denomination is particularly concerned with the Court of Appeal’s analysis of the Respondent’s flyers described as Schedules “D” and “E” within the Court

¹ *Whatcott v. Saskatchewan (Human Rights Tribunal)*, 2010 SKCA 26 at para 1, 317 DLR (4th) 69 (QL) [*Court of Appeal Decision*]: Record of the Appellant, Tab 5.

² Part I of *The Constitution Act*, 1982, Schedule B of the *Canada Act 1982* (U.K.), 1982, c.11.

³ Affidavit of Jennifer Dickson sworn April 26, 2011 (filed April 29, 2011) at para. 6.

of Appeal Decision (the “**Respondent’s Flyers**”). Schedule “D” is titled “Keep Homosexuality out of Saskatoon’s Public Schools !” and reads in part:

“Now the homosexuals want to share their filth and propaganda with Saskatchewan’s children...We also believe that for sodomites and lesbians who want to remain in their lifestyle and proselytize vulnerable young people that civil law should discriminate against them...Our children will pay the price in disease, death, abuse and ultimately eternal judgment if we do not say no to the sodomite desire to socialize your children into accepting something that is clearly wrong”.⁴

The original form of Schedule “E” reads in part “Break the Silence! Sodomites are 430 times more likely to acquire Aids & 3 times more likely to sexually abuse children!”.⁵

PART II QUESTIONS IN ISSUE

5. Issues 1-4 raised by the Appellant consider whether s. 14(1)(b) of the *Code*, infringes s. 2(b) or s. 2(a) of the *Charter*, and whether such infringement is justified under s. 1 of the *Charter*. The Unitarian Denomination agrees with the Appellant’s conclusion as to the constitutionality of s. 14(1)(b) of the *Code*, but will not restate the constitutional analysis.
6. If this Honourable Court holds s. 14(1)(b) of the *Code* to be constitutionally valid, then Issue 5 raised by the Appellant considers whether the Saskatchewan Court of Appeal erred by finding that the Respondent’s Flyers did not contravene s. 14(1)(b) of the *Code*. The Unitarian Denomination takes no position with respect to the conclusion of the Court of Appeal, but instead submits that the reasoning of the court below requires reconsideration. The Unitarian Denomination submits that the following questions are raised in this appeal:
 - (a) Should religious belief insulate one from consequences under s. 14(1)(b) of the *Code*, where the specific exercise of religious expression attacks the dignity and value of an identifiable group; and
 - (b) Is tolerance of prejudice against gays and lesbians, resulting in unequal treatment of sexual orientation as an enumerated ground of discrimination under the *Code*, as demonstrated in the Court of Appeal Decision, appropriate under the *Charter*?

⁴ Tribunal Exhibit: Record of the Appellant, Tab 18 at 271.

⁵ Tribunal Exhibit: Record of the Appellant, Tab 18 at 272.

7. The Unitarian Denomination submits that the answer to both questions should be no.

PART III STATEMENT OF ARGUMENT

A. Religious belief ought not insulate one from consequences under s. 14(1)(b) of the Code, where the specific exercise of religious expression attacks the dignity and value of an identifiable group.

8. There are reasonable limits to religious expression. The Unitarian Denomination strongly advocates for the freedom of religious thought, while also endorsing reasonable limits on religious expression, particularly where that expression causes unreasonable harm to an identifiable group. As this Honourable Court has affirmed, reasonable limits are necessary to protect the fundamental rights and freedoms of others.⁶ Religion has a place in the public sphere, but the public sphere must be open to all members of society. Religion cannot be determinative of participation within the public sphere. Religion cannot use morality as a sword to harm a protected group.
9. In a pluralistic society religious expression must be reasonably limited where such expression interferes with the benefit of the equality guarantee.⁷ Hate speech limits the self-development and growth of the targeted group, contrary to the principles of Unitarianism, contrary to the purposes of religious pursuit generally and ultimately, contrary to the *Charter*. The Unitarian Denomination submits that at the core of the equality guarantee is the freedom to participate in society.
10. Unitarianism embraces a variety of beliefs, as the membership of the Unitarian Denomination is based on adherence to core principles, rather than on theological beliefs, which may be divergent between individual members. In the broader context of a pluralistic society, balancing the freedom of religious belief does not require the tolerance of hateful prejudice. Limits must be placed where religious expression causes an unacceptable level of harm to others. The use of polemical language is not at issue in this Appeal. The issue is the content of the Respondent's Flyers, which express a message of exclusion and seek to disenfranchise and promote hatred of an identifiable group.

⁶ *R. v. Big M Drug Mart Ltd.* [1985] 1 SCR 295 at paras. 94-95 (QL); Appellant's Book of Authorities ("ABA"), Tab 16. *Syndicat Northcrest v. Amselem*, 2004 SCC 47, [2004] 2 SCR 551 at paras. 62-63 & 178 (QL) [*Amselem*]: ABA, Tab 25.

⁷ *Amselem*, *ibid* at para. 87: ABA, Tab 25.

11. Even religiously motivated expression can cause harm to targeted groups, when the expression rises to the level of hatred. Religiously inspired hatred cannot be vindicated by the overall messages of love, tolerance and forgiveness common to many religions.⁸ The respondent in this Appeal is Mr. Whatcott, not the teachings or interpretations of Christianity. Morality is often tied to religious belief, as it is for the Respondent. In a pluralistic society different conceptions of morality must co-exist and moral debate should flourish in a free and responsible search for truth and meaning.
12. However, the Respondent's message is distinguishable from free and responsible moral debate because the conclusion it seeks is the exclusion and disenfranchisement of sexual minorities. Schedule "D" warns against the sharing of homosexual filth and propaganda in Saskatoon schools, urges against the acceptance of homosexuality as something that is clearly wrong, and calls for "civil law [to] discriminate against them". Schedule "D" exhibits several of the hallmarks of hate,⁹ including (1) the portrayal of sexual minorities as dangerous by nature, (2) dehumanizing same-sex attraction and relationships, and (3) calling for exclusion from schools and laws to discriminate against sexual minorities. In addition, Schedule "E" seeks to pass off prejudice as truth.
13. Contrary to the reasons of Smith J.A.,¹⁰ the Respondent's Flyers are distinguishable from debates of male circumcision in Judaism, the use of artificial birth control in Roman Catholicism and the exclusion of women from leadership positions in various religions in that none of the aforementioned debates impugn the dignity or value of the groups at issue, nor seek to exclude their membership from participation in important institutions of Canadian society. Debate regarding the wearing of a niqab while receiving public services flourishes without impediment, without attempting to exclude and disqualify the group in question from participation in society.¹¹

⁸ Bruce MacDougall, "Silence in the Classroom: Limits on Homosexual Expression and Visibility in Education and the Privileging of Homophobic Religious Ideology" (1998) 61 Sask.L.R. 41 at paras. 43-53 [MacDougall]: Tab 13.

⁹ *Warman v. Kouba* [2006] CHR D No. 50 at paras. 23-77 (QL): ABA, Tab 29.

¹⁰ *Court of Appeal Decision, supra* note 1 at para. 130: Record of the Appellant, Tab 5.

¹¹ Sarah Boesveld, "No veil or no service from public institutions, new bill urges Quebeckers" *The Globe and Mail* (25 March 2010): Tab 8.

14. In a pluralistic society of different religions and varying conceptions of morality, s. 14(1)(b) of the *Code* is a reasonable alternative to the unregulated promotion of hatred, including religiously inspired hatred.¹² Section 14(1)(b) is a remedial provision that promotes tolerance, consistent with both the Unitarian and the *Charter* principles recognizing the inherent worth and dignity of every person. Furthermore, s. 14(1)(b) is a reasonable restriction on publication because: (1) it is a legislated restriction that balances conflicting constitutional rights and values, (2) which is applied by expert tribunals, (3) according to legal standards directed by courts.
15. The Unitarian Denomination submits that sexual minorities must be comfortable in being citizens in Canadian society. Regardless of one's view on the existence or destination of the human soul, we currently inhabit a pluralistic society, one where sexual identity cannot be determinative of acceptance, inclusion and participation. A singular vision of morality and opposition to same-sex relationships cannot be given *carte blanche* in a pluralistic, democratic society governed by the Constitution, where members are protected by the *Charter*.
- B. Tolerance of prejudice against gays and lesbians, resulting in unequal treatment of sexual orientation as an enumerated ground of discrimination under the *Code* is not appropriate under the *Charter*.**
16. Prejudice against sexual minorities, including gays and lesbians, remains prevalent in Canada.¹³ Moreover, the tolerance of prejudice is evident in Canadian institutions.¹⁴ The Unitarian Denomination submits that tolerated prejudice is evident in several aspects of the Court of Appeal Decision, the effect of which is to provide unequal protection to sexual orientation as an enumerated ground under the *Code*. Tolerated prejudice is evident (1) in the characterization of the impugned flyers as engaged in a morality debate that distinguishes between sexual conduct and sexual orientation, and (2) in affording greater protection to expression that debates the membership and role of sexual minorities within society, without proper consideration of the equality guarantee under the *Charter*.

¹² See MacDougall, *supra* note 8 at paras. 56-61: Tab 13.

¹³ Rod Mickleburgh, "Vancouver gay bashing ruled a hate crime" *The Globe and Mail* (09 November 2010) 7: Tab 14.

¹⁴ Phil Fontaine, *Modern Racism in Canada: The Donald Gow Memorial Lecture 1998* (Kingston: Queen's University School of Public Policy) at 1-10: Tab 11.

(1) Eliminating the distinction between attacks on sexual conduct versus sexual orientation, where the context identifies conduct with the sexual minority

17. The Unitarian Denomination agrees that context is of vital importance in adjudicating complaints made pursuant to s. 14(1)(b) of the *Code*. Context is crucial where impugned expression lies on a continuum from being merely offensive to reaching the level of hatred described by this Court in *Canada (Human Rights Commission) v. Taylor* as showing “unusually strong and deep-felt emotions of detestation, calumny and vilification”.¹⁵ Where expression—even polemical expression—falls on such a continuum must be guided by several contextual factors, which the Appellant highlights.¹⁶
18. The Unitarian Denomination submits that in the context of the Respondent’s Flyers one cannot reasonably distinguish between attacks on sexual conduct and the sexual orientation of gays and lesbians. It is that very conduct that prominently defines these sexual minorities. By giving credence to the distinction between sexual conduct and sexual orientation,¹⁷ the Court of Appeal incorrectly applied a contextual factor that is prejudicial to sexual minorities. This creates a dangerous precedent that may be used to justify hate and discrimination against identifiable groups, including sexual minorities, in the future.
19. Protecting sexual minorities presents challenges to the application of human rights and the equality guarantee because sexual orientation is an enumerated ground described by conduct. However, sexual orientation is no less deserving of protection than race, gender, or the other protected grounds. Moreover, human rights law already appreciates that conduct such as speaking with an accent,¹⁸ or cooking foods with ethnic odours,¹⁹ can be tied to an enumerated ground, and that discrimination based on the conduct at issue is truly prejudice against the enumerated ground.

¹⁵ [1990] 3 SCR 892 [*Taylor*]: ABA, Tab 5.

¹⁶ Appellant’s Factum at para. 53.

¹⁷ *Court of Appeal Decision, supra* note 1 at paras. 134-36: Record of the Appellant, Tab 5.

¹⁸ *Jones v. In 2 Business*, 2008 BCHRT 460 at para. 5 (QL): Tab 4.

¹⁹ *Chauhan v. Norkam Seniors Housing Cooperative Association*, 2004 BCHRT 262 at para. 135 (WL): Tab 2.

20. The identity of a gay, lesbian or bisexual individual is certainly more fulsome than only same-sex conduct. However, it is the same-sex conduct that is used to define the category of sexual orientation as a protected ground. When the defining characteristic of sexual orientation is the formation of same-sex affective, romantic or sexual relationships, detestation and vilification of sexual conduct cannot easily be distinguished from identity.²⁰
21. Allowing the vilification of same-sex conduct permits hateful and harmful expression that should be prohibited because the outward expression of same-sex conduct will otherwise become impossible due to intolerance.²¹ The formation of self-identity amongst sexual minorities is presently and historically difficult, especially within a school setting.²²
22. Context determines whether sexual morality is being debated or whether same-sex relationships are being detested. Schedule “D” debates the very presence of same-sex conduct, which is a primary identifier of sexual minorities, and impugns both the conduct and the practicing group identified by the Respondent Flyers—sexual minorities. In the decision below, *Hunter and Smith J.J.A.* both unreasonably ignore that both Schedules “D” & “E” use the language of “sodomites” and “lesbians” to refer to an identifiable group, rather than to conduct. Schedules “D” & “E” seek to prevent tolerance of homosexuals from being taught in public schools, and in fact Schedule “D” calls for legalized discrimination against gays and lesbians. In this Appeal, no reasonable distinction between sexual conduct and sexual orientation can be made where expression demands intolerance of an identifiable group.

²⁰ *Trinity Western University v. College of Teachers*, [2001] 1 SCR 772, 2001 SCC 31 at para. 69 (Justice L’Heureux-Dubé in dissent): ABA, Tab 27.

²¹ Carolyn F. Wong *et al.*, “Harassment, Discrimination, Violence, and Illicit Drug Use Among Young Men Who Have Sex with Men” (2010) 22:4 AIDS Education and Prevention 286: Tab 16.

²² Lynne Hillier & Lyn Harrison, “Homophobia and the Production of Shame: Young People and Same Sex Attraction” (2004) 6:1 Culture, Health & Sexuality 79: Tab 12. MacDougall at paras. 4-8: Tab 13.

(2) The equality of sexual orientation as an enumerated ground

23. The Unitarian Denomination submits that the inherent dignity and worth of a person that underlies the equality guarantee must be universally applied.²³ Failure to recognize and apply inherent rights is a shortcoming of social and political institutions,²⁴ since society is the guarantor of inherent dignity.²⁵ The clear purpose in of human rights legislation or the right to equality under the *Charter* is to protect from the prejudices of the majority. Whether society is engaged in a moral or policy debate regarding the inclusion of homosexuality or gays and lesbians in public schools, the fundamental right to equality is not diminished.
24. Therefore, the Unitarian Denomination submits that debates grounded in the exclusion of sexual minorities from participation in society, which gave rise to social and historical disadvantage, cannot continue to be justified as excusable political or religious discourse. Furthermore, the policy result sought by the Respondent is objectively fuelled by underlying prejudices.
25. Exclusion from society and disenfranchisement are distant from the core Canadian values of democracy and equality. Political discourse aimed at disenfranchisement of identifiable groups is the furthest discourse from the core of democracy. Consequently, the Unitarian Denomination submits that such discourse is not entitled to any special protection from the consequences of s. 14(1)(b) of the *Code*. The stamp of political debate, or colouring as merely polemical, does not legitimize the strong feelings of vilification and detestation that fuel a debate to exclude an identifiable group from participation in society's institutions.
26. Schools play a crucial role in promoting values of multiculturalism, diversity and developing a culture of respect for the rights of others.²⁶ The aspirations of society are

²³ Jack Donnelly, "Human Rights as Natural Rights" (1982) 4:3 Human Rights Quarterly 391 [Donnelly]: Tab 10.

²⁴ *Ibid* at 398: Tab 10.

²⁵ George E. Panichas, "The Structure of Basic Human Rights" (1985) 4:3 Law and Philosophy 353: Tab 15.

²⁶ *Multani v. Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6, [2006] 1 SCR 256 at paras. 78-79 (QL): ABA, Tab 13; *Ross v. New Brunswick School District No. 15*, [1996] 1 SCR 825, 133 D.L.R. (4th) 1 at para. 42 (QL): ABA, Tab 23.

best taught by example with teachers as the medium.²⁷ Preventing sexual minorities from teaching in our public schools because of identity is incredibly hateful, not because of the engagement in polemical debate, but because of the immense prejudice and deep feeling of detestation that grounds the position that sexual minorities inherently harm children.²⁸ These feelings need not be expressed explicitly, but are necessary and are conveyed in the Respondent's message of institutionalized exclusion and marginalization.

27. History provides several examples of policy decisions that tolerated underlying prejudices that led to conclusions of disenfranchisement, exclusion and even race-based internment.²⁹ Canada is no exception to the rationalization of prejudice,³⁰ which is readily apparent on reflection, but arguably also apparent at the relevant time if cognizant of the underlying prejudices. Recently in Canadian history targeted groups have been denied the right to vote, the ability to hold office or the ability to hold certain occupations, these include: women, Chinese, Doukhobors, East Indians, Eskimos, Indians, Japanese, and Mennonites.³¹
28. By employing prejudicial contextual factors to provide greater protection to moral debate regarding sexual orientation, the Court of Appeal tolerates prejudice against sexual minorities and has created tiered protection for the enumerated grounds under the *Code*. The Court of Appeal excused the Respondent's Flyers since they were engaged in a moral debate,³² on whether "information on homosexuality be included in the curriculum and school libraries"³³ and about "teaching about homosexuality in public schools"³⁴. Effectively, the Court of Appeal has denied sexual minorities equal benefit of s. 15 of the *Charter* and equal benefit of protections under the *Code*.

²⁷ *R. v. M. (M.R.)*, [1998] 3 SCR 393, 166 DLR (4th) 261 at para. 3 (QL): Tab 5; *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31, [2001] 1 SCR 772 at para. 13 (QL): ABA, Tab 27.

²⁸ MacDougall, *supra* note 8 at paras. 23-27: Tab 13.

²⁹ *Edwards v. Canada (Attorney General)*, [1928] SCR 276: Tab 3; *Reference re: British Columbia Provincial Elections Act, 1897*, [1903] A.C. 151: Tab 6; *Reference Re: Persons of Japanese Race*, [1946] SCR 248, [1946] 3 DLR 321: Tab 7.

³⁰ *Prohibition Negro Immigrants from landing in Canada* (Minister of the Interior), PC 1911-1324 (Approved August 8, 1911), A-1-d, Volume 2807 [archived at Archives and Library Canada Paper C-117932]: Tab 1.

³¹ J. Patrick Boyer, *Election Law in Canada*, vol. 1 (Toronto, ON: Butterworths, 1987) at 386-391: Tab 9.

³² *Court of Appeal Decision*, *supra* note 1 at para. 62: Record of the Appellant, Tab 5.

³³ *Court of Appeal Decision*, *supra* note 1 at para. 71: Record of the Appellant, Tab 5.

³⁴ *Court of Appeal Decision*, *supra* note 1 at para. 78: Record of the Appellant, Tab 5.

PART IV SUBMISSION ON COSTS

29. Both the UCS and the CUC are registered charitable organizations with limited funding. The submissions of the Unitarian Denomination have only been possible because of *pro bono* counsel. Consequently, the Unitarian Denomination submits that there should be no award of costs against it.

PART V ORDER REQUESTED & POSITION OF THE INTERVENERS

30. The Unitarian Denomination respectfully requests that this Honourable Court permit the Unitarian Denomination to present oral arguments at the hearing of this Appeal.

31. With respect to Issues 1-4 raised by the Appellant, the Unitarian Denomination submits that s. 14(1)(b) of the *Code* infringes both s. 2(b) and s. 2(a) of the *Charter*, but that such infringements is justified under s. 1 of the *Charter*.

32. In reviewing the decision of the court below and in determining the outcome of this Appeal, the Unitarian Denomination submits that:

- (a) Religious belief ought not insulate one from consequences under s. 14(1)(b) of the *Code*, where religious expression attacks the dignity and value of an identifiable group; and
- (b) No reasonable distinction can be made in the context of the Respondent's Flyers between vilification of conduct vs. detestation of gays and lesbians. Moreover, despite tolerated prejudice against gays and lesbians, sexual orientation must be treated equal to other enumerated ground of discrimination under the *Code*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of August, 2011.

FASKEN MARTINEAU DuMOULIN LLP

Per: _____
Arif Chowdhury

Counsel for the Interveners,
The Unitarian Congregation of Saskatoon and
the Canadian Unitarian Council

PART VI TABLE OF AUTHORITIES

Legislation

Citation	Paragraph References
1. <i>Canadian Charter of Rights and Freedoms</i> , Part 1 of <i>The Constitution Act</i> , 1982, Schedule B of the <i>Canada Act 1982</i> (U.K.), 1982, c.11.	2, 5, 6, 9, 14, 15, 16, 23, 28, 31
2. <i>Prohibition Negro Immigrants from landing in Canada</i> (Minister of the Interior), PC 1911-1324 (Approved August 8, 1911), A-1-d, Volume 2807 [archived at Archives and Library Canada Paper C-117932].	27
3. <i>Saskatchewan Human Rights Code</i> , S.S. 1979, c. S-24.1.	3, 5, 6, 14, 16, 17, 25, 28, 31, 32

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Citation	Paragraph References
4. <i>Chauhan v. Norkam Seniors Housing Cooperative Association</i> , 2004 BCHRT 262.	19
5. <i>Edwards v. Canada (Attorney General)</i> , [1928] SCR 276.	27
6. <i>Jones v. In 2 Business</i> , 2008 BCHRT 460.	19
7. <i>Multani v. Commission scolaire Marguerite-Bourgeois</i> , 2006 SCC 6, [2006] 1 SCR 256.	26
8. <i>R. v. Big M Drug Mart Ltd.</i> [1985] 1 SCR 295.	8
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10. <i>Reference re: British Columbia Provincial Elections Act, 1897</i> , [1903]	27

	A.C. 151.	
11.	<i>Reference Re: Persons of Japanese Race</i> , [1946] SCR 248, [1946] 3 DLR 321.	27
12.	<i>Ross v. New Brunswick School District No. 15</i> , [1996] 1 SCR 825, 133 D.L.R. (4th) 1.	26
13.	<i>Syndicat Northcrest v. Amselem</i> , 2004 SCC 47, [2004] 2 SCR 551.	8, 9
14.	<i>Canada (Human rights commission) v. Taylor</i> , [1990] 3 SCR 892.	17
15.	<i>Trinity Western University v. College of Teachers</i> , [2001] 1 SCR 772, 2001 SCC 31.	20, 26
16.	<i>Warman v. Kouba</i> [2006] CHR D No. 50.	12
17.	<i>Whatcott v. Saskatchewan (Human Rights Tribunal)</i> , 2010 SKCA 26, 317 DLR (4th) 69.	1, 13, 18, 28

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18. Boesveld, Sarah, “No veil or no service from public institutions, new bill urges Quebeckers” <i>The Globe and Mail</i> (25 March 2010).	13
19. Boyer, J. Patrick, <i>Election Law in Canada</i> , vol. 1 (Toronto, ON: Butterworths, 1987).	27
20. Donnelly, Jack, “Human Rights as Natural Rights” (1982) 4:3 Human Rights Quarterly 391.	23
21. Fontaine, Phil, <i>Modern Racism in Canada: The Donald Gow Memorial Lecture 1998</i> (Kingston: Queen’s University School of Public Policy).	16
22. Hillier, Lynne & Harrison, Lyn, “Homophobia and the Production of Shame: Young People and Same Sex Attraction” (2004) 6:1 Culture, Health & Sexuality 79.	21

23.	MacDougall, Bruce, “Silence in the Classroom: Limits on Homosexual Expression and Visibility in Education and the Privileging of Homophobic Religious Ideology” (1998) 61 Sask.L.R. 41.	11, 14, 21, 26
24.	Mickleburgh, Rod, “Vancouver gay bashing ruled a hate crime” <i>The Globe and Mail</i> (09 November 2010) 7.	16
25.	Panichas, George E., “The Structure of Basic Human Rights” (1985) 4:3 Law and Philosophy 353.	23
26.	Wong, Carolyn F. <i>et al.</i> , “Harassment, Discrimination, Violence, and Illicit Drug Use Among Young Men Who Have Sex with Men” (2010) 22:4 AIDS Education and Prevention 286.	21

PART VII LEGISLATION AT ISSUE

1. Canadian Charter of Rights and Freedoms, Part I of The Constitution Act, 1982, Schedule B of the Canada Act 1982 (U.K.), 1982, c.11.

FUNDAMENTAL FREEDOMS / LIBERTÉS FONDAMENTALES

2. Everyone has the following fundamental freedoms:	2. Chacun a les libertés fondamentales suivantes:
(a) freedom of conscience and religion;	(a) liberté de conscience et de religion;
(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;	(b) liberté de pensée, de croyance, d’opinion et d’expression, y compris la liberté de la presse et des autres moyens de communication;
(c) freedom of peaceful assembly; and	(c) liberté de réunion pacifique;
(d) freedom of association.	(d) liberté d’association.
...	...

EQUALITY RIGHTS / DROITS À L’ÉGALITÉ

Equality before and under law and equal protection and benefit of law	Égalité devant la loi, égalité de bénéfice et protection égale de la loi
15. (1) Every individual is equal before and	15. (1) La loi ne fait acception de personne et

under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques

Affirmative action programs

Programmes de promotion sociale

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Le paragraphe (1) n'a pas pour effet d'interdire les lois, programmes ou activités destinés à améliorer la situation d'individus ou de groupes défavorisés, notamment du fait de leur race, de leur origine nationale ou ethnique, de leur couleur, de leur religion, de leur sexe, de leur âge ou de leurs déficiences mentales ou physiques.

2. *Prohibition Negro Immigrants from landing in Canada (Minister of the Interior), PC 1911-1324.*

PRESENT:

HIS EXCELLENCY

IN COUNCIL:

His Excellency in council, in virtue of the provisions of sub-section (c) or Section 38 of the Immigration Act, is pleased to Order and it is hereby Ordered as follows:-

For a period of one year from and after the date hereof the landing in Canada shall be and the same is prohibited of any immigrants belonging to the Negro race, which race is deemed unsuitable to the climate and requirements of Canada.

3. *Saskatchewan Human Rights Code, S.S. 1979, c. S-24.1, s. 14.*

Interpretation

2(1) In this Act:

(m.01) "prohibited ground" means:

- (i) religion;
- (ii) creed;
- (iii) marital status;
- (iv) family status;
- (v) sex;
- (vi) sexual orientation;
- (vii) disability;
- (viii) age;
- (ix) colour;
- (x) ancestry;
- (xi) nationality;
- (xii) place of origin;
- (xiii) race or perceived race; and
- (xiv) receipt of public assistance;

...

Objects

3 The objects of this Act are:

- (a) to promote recognition of the inherent dignity and the equal inalienable rights of all members of the human family; and
- (b) to further public policy in Saskatchewan that every person is free and equal in dignity and rights and to discourage and eliminate discrimination.

Right to freedom of conscience

4 Every person and every class of persons shall enjoy the right to freedom of conscience, opinion and belief and freedom of religious association, teaching, practice and worship.

Right to free expression

5 Every person and every class of persons shall, under the law, enjoy the right to freedom of expression through all means of communication, including, without limiting the generality of the foregoing, the arts, speech, the press or radio, television or any other broadcasting device.

...

Prohibitions against publications

14(1) No person shall publish or display, or cause or permit to be published or displayed, on any lands or premises or in a newspaper, through a television or radio broadcasting station or any other broadcasting device, or in any printed matter or publication or by means of any other medium that the person owns, controls, distributes or sells, any representation, including any notice, sign, symbol, emblem, article, statement or other representation:

- (a) tending or likely to tend to deprive, abridge or otherwise restrict the enjoyment by any person or class of persons, on the basis of a prohibited ground, of any right to which that person or class of persons is entitled under law; or
- (b) that exposes or tends to expose to hatred, ridicules, belittles or otherwise affronts the dignity of any person or class of persons on the basis of a prohibited ground.

(2) Nothing in subsection (1) restricts the right to freedom of expression under the law upon any subject.