

Court File No. 27168

**IN THE SUPREME COURT OF CANADA**  
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)

BETWEEN:

TRINITY WESTERN UNIVERSITY and DONNA GAIL LINDQUIST

RESPONDENTS  
(RESPONDENTS)

AND:

THE BRITISH COLUMBIA COLLEGE OF TEACHERS

APPLICANT  
(APPELLANT)

AND:

THE CANADIAN CONFERENCE OF CATHOLIC BISHOPS

INTERVENER

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**FACTUM OF THE INTERVENER**  
**THE CANADIAN CONFERENCE OF CATHOLIC BISHOPS**

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**BARNES, SAMMON**  
**Barristers and Solicitors**  
200 Elgin Street, Suite 400  
Ottawa, Ontario, K2P 1L5

Tel: (613) 594-8000  
Fax: (613) 235-7578

**W.J. Sammon**  
Counsel for the Intervener,  
The Canadian Conference of Catholic Bishops

**BARNES, SAMMON**  
**Barristers and Solicitors**  
200 Elgin Street, Suite 400  
Ottawa, Ontario, K2P 1L5

Tel: (613) 594-8000  
Fax: (613) 235-7578

**W.J. Sammon**  
Ottawa Agents

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200 Elgin Street, Suite 400  
Ottawa, Ontario, K2P 1L5

Tel: (613) 594-8000  
Fax: (613) 235-7578

**W.J. Sammon**  
Ottawa Agents

**TO:**           **KUHN & COMPANY**  
Barristers and Solicitors  
300-31935 South Fraser Way  
Abbotsford, B.C. V2T 5N7  
Tel. (604) 864-8877  
Fax: (604) 864-8867

ROBERT G. KUHN  
KEVIN G. SAWATSKY AND  
KEVIN L. BOONSTRA  
Solicitors for the Respondents

**MCCARTHY TETRAULT**  
Barristers and Solicitors  
1400-40 Elgin Street  
Ottawa, Ontario. K1P 5K6  
Tel. (613) 238-2000  
Fax. (613) 563-9386

COLIN S. BAXTER  
Ottawa Agents for the Respondents

**AND TO:**   **NELSON & VANDERKRUYK**  
Barristers and Solicitors  
13<sup>th</sup> Floor, 335 Burrard Street  
Vancouver, B.C. V6C 2G8  
Tel. (604) 684-1311  
Fax. (604) 684-6402

THOMAS R. BERGER, Q.C.  
GARY A. NELSON  
Solicitors for the Appellant

**GOWLING, STRATHY & HENDERSON**  
Barristers and Solicitors  
2600-160 Elgin Street  
Ottawa, Ontario. K2P 3C3  
Tel. (613) 233-1781  
Fax. (613) 563-9869

Ottawa Agents for the Appellant

**AND TO:**   **FRASER MILNER**  
Barristers and Solicitors  
237-4th Avenue S.W.  
Calgary, Alberta T2P 4X7  
Tel. (403) 268-6861  
Fax. (403) 268-3100

GERALD CHIPEUR  
Solicitor for the Interveners,  
The Seventh Day Adventist Church  
in Canada and The Christian Legal  
Fellowship

**FRASER MILNER**  
Barristers and Solicitors  
1200-180 Elgin Street  
Ottawa, Ontario. K2P 2K7  
Tel. (623) 783-9600  
Fax. (613) 783-9690

CAMERON P. TIESMA  
Ottawa Agents for the Interveners,  
The Seventh Day Adventist Church  
in Canada and The Christian Legal  
Fellowship

**AND TO:**   **NELLIGAN POWER**  
Barristers and Solicitors  
1900-66 Slater Street  
Ottawa, Ontario. K1P 5H1  
Tel. (613) 231-8276  
Fax. (613) 238-2098

PAM MACEACHERN  
Solicitor for the Intervener,  
EGALE Canada Inc.

AND TO: **GREEN & CHERCOVER**  
Barristers and Solicitors  
10<sup>th</sup> Floor, 30 St. Clair Ave. W.  
Toronto, Ontario. M4V 3A1  
Tel. (416) 968-3333  
Fax. (416) 968-0325

**MAURICE GREEN and  
SUSAN URSEL**  
Ontario Secondary School  
Teachers' Federation

**NELLIGAN POWER**  
Barristers and Solicitors  
1900-66 Slater Street  
Ottawa, Ontario. K1P 5H1  
Tel. (613) 238-8080  
Fax. (613) 238-2098

Ottawa Agents for the Intervener,  
Ontario Secondary School  
Teachers' Federation

AND TO: **STIKEMAN, ELLIOTT**  
Barristers and Solicitors  
Suite 5300, P.O. Box 85  
Toronto, Ontario. M5L 1B9.  
Tel. (416) 869-5602  
Fax. (416) 947-0866

**DAVID M. BROWN and  
ADRIAN C. LANG**  
Solicitors for the Intervener,  
The Evangelical Fellowship of  
Canada

**STIKEMAN, ELLIOTT**  
Barristers and Solicitors  
914 - 50 O'Connor Street  
Ottawa, Ontario. K1P 6L2  
Tel. (613) 234-4555  
Fax. (613) 230-8877

**MIRKO BIBIC**  
Ottawa Agents for the Intervener,  
The Evangelical Fellowship of Canada

AND TO: **LINDSAY KENNY**  
Barristers and Solicitors  
1700-700 West Pender Street  
Vancouver, B.C. V6C 1G8  
Tel. (604) 687-1323  
Fax. (604) 687-2347

**F.G. POTTS and TIMOTHY  
J. DELANEY**  
Solicitors for the Intervener, The  
British Columbia Civil  
Liberties Association.

AND TO:

**GOWLING, STRATHY &  
HENDERSON**

Barristers and Solicitors  
Suite 4900, Commerce Court W.  
Toronto, Ontario M5L 1J3  
Tel. (416) 862-4324  
Fax. (416) 862-7661

ANDREW LOKAN and  
HEATHER BOWIE  
Solicitors for the Intervener,  
The Canadian Civil Liberties  
Association

**GOWLING, STRATHY &  
HENDERSON**

Barristers and Solicitors  
2600-160 Elgin Street  
Ottawa, Ontario. K2P 3C3.  
Tel. (613) 232-1781  
Fax. (613) 563-9869

EDUARD VAN BEMMEL  
Ottawa Agents for the Intervener,  
The Canadian Civil Liberties  
Association

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10     **PART I - STATEMENT OF FACTS**

1.     This Intervener, the Canadian Conference of Catholic Bishops (CCCB) (which was granted leave to intervene in this appeal by the Order of the Honourable Mr. Justice Gonthier dated the 28<sup>th</sup> day of April, 2000) does not dispute the facts as set out in the Facta of the Appellants and Respondents.

2.     The CCCB was founded more than fifty years ago and is the national association of Catholic Bishops in Canada. The bishops of the seventy-five Catholic dioceses are charged with pastoral care of approximately 12.5 million Catholics across the country.

3.     The CCCB, either on its own or in association with other groups, has been active in advocating its position before this Court in the following cases:

*Jacobi et al v Boys' and Girls' Club of Vernon* [1999] 2 S.C.R. 570

*The Children's Foundation et al v Bazley* [1999] 2 S.C.R. 534

*Dobson v Dobson* [1999] 2 S.C.R. 753

*Winnipeg Child and Family Services (Northwest Area) v G.(D.F.)* [1997] 3 S.C.R. 925

*Borowski v The Attorney General of Canada* [1989] 1 S.C.R. 342

*Egan v Canada* [1995] 2 S.C.R. 513

*Rodriguez v Canada (Attorney General)* [1993] 3 S.C.R. 519

*R. v Latimer* S.C.C. File No. 26980

4.     Given the national scope of its membership and its significant role in Canada's Catholic community, the CCCB is in a unique position to bring to the attention of this Court the concerns of that community as raised by the important issues in this appeal.

35     **PART II - POINTS IN ISSUE**

5.     The issues raised in this appeal that will be argued by this Intervener are as follows:

- 10 a) Did BCCT's decision to refuse TWU's application for certification of its teacher education program infringe the right to religious freedom of TWU, its students and graduates as guaranteed by s. 2(a) of the *Charter*?
- b) Did BCCT's decision infringe the right to freedom of expression of TWU, its students and graduates as guaranteed by s. 2(b) of the *Charter*?
- 15 c) Did BCCT's decision infringe the equality rights of TWU students and graduates as guaranteed by s. 15(1) of the *Charter*?
- d) If BCCT's decision infringed any one, or all of these *Charter* rights, can such infringement be justified under s. 1 of the *Charter*?

20 **PART III - THE ARGUMENT**

**CCCB's Concerns**

25 6. Catholic schools, commonly referred to as separate schools, and religious institutions are an integral part of Canada's unique cultural heritage and are elemental to this country's social fabric. In some parts of the country, the Catholic school's distinctive place in public life has been guaranteed through a constitutionally entrenched right to public funding which right is immune from *Charter* challenge.

30 *Reference re Bill 30, An Act to Amend the Education Act (Ontario)* [1987] 1 S.C.R. 1148 at 1197-98; *Adler v Ontario* [1996] 3 S.C.R. 609 at 639, 643, 646 [hereinafter *Adler*]

35 7. The distinctive nature of Catholic schools was accurately described by McIntyre, J. in *Caldwell* when at 624-25, he said, "The Board found that the Catholic school differed from the public school. This difference does not consist in the mere addition of religious training to the academic curriculum. The religious or doctrinal aspect of the school lies at its very heart and colours all its activities and programs. The role of the teacher in this respect is fundamental to the whole effort of the school, as much in its spiritual nature as in the



10 academic. It is my opinion that objectively viewed, having in mind the special nature and  
 objectives of the school, the requirement of religious conformance including the acceptance  
 and observance of the Church's rules regarding marriage is reasonably necessary to assure the  
 achievement of the objects of the school.”

15 *Caldwell v St. Thomas Aquinas High School* [1984] 2 S.C.R. 603 at 624-625  
 [hereinafter *Caldwell*]

8. Similarly, and more recently, Weiler, J.A. for the Ontario Court of Appeal found in *Daly* at  
 362, “...the aim of Catholic education is not merely the transmission of knowledge and  
 development of skills, but rather the integral formation of the whole person according to a  
 20 vision of life that is revealed in the Catholic tradition. Religious faith on the part of the  
 teachers is a valid consideration if the aim of the school to create a community of believers  
 with a distinct sense of the Catholic culture is to be achieved”.

25 *Daly v Ontario* (1999) 44 O.R. (3d) 349 at 362 (Ont. C.A.), application for leave to  
 appeal to the Supreme Court of Canada dismissed 31 October, 1999 [hereinafter  
*Daly*]

9. The British Columbia College of Teachers (BCCT) decision to deny Trinity Western  
 University's (TWU) application for certification of its teacher education program on the basis  
 of its moral views expressed in the community standards agreement is a collateral attack on  
 30 the “religious or doctrinal” aspect of Catholic schools which McIntyre, J. found was at the  
 heart of the Catholic school system and coloured all their activities and programs.

10. In the British Columbia Court of Appeal, Rowles, J.A. found BCCT's decision was justified  
 as “there may be a valid concern that graduates may hold, or be perceived as holding,  
 35 homophobic attitudes as a result of their acceptance of the community standards agreement  
 at TWU”. This reasoning would equally apply to Catholic separate schools and other  
 Catholic institutions as the Catholic church's position on homosexual conduct is similar to  
 TWU's.

40 *Trinity Western et al v The British Columbia College of Teachers*, Docket No.  
 CA023720, BCCA, 30<sup>th</sup> December, 1998, per Rowles, J.A. at para. 257 [hereinafter  
*Trinity Western C.A.*]

- 10 11. Based on reasons underlying BCCT's decision and Rowles, J. A. decision, no Catholic student  
or teacher would be allowed to teach in the British Columbia public school system until they  
were re-educated in what BCCT referred to as Canadian, *Charter* or secular values.
- 15 12. It would also imply that while training in religious institutions may be satisfactory for  
employment in those institutions, it would be inadequate for employment in public or secular  
places. It would raise the question as to what other careers or jobs would be "off limits"  
because of a person's religious beliefs. BCCT's decision would tend to marginalize people  
who held religious beliefs contrary to its view of Canadian values.
- 20 13. Also, if BCCT's reasoning was accepted and taken to its logical conclusion, it would mean  
no Catholic school board could insist on religious conformity when hiring or terminating  
teachers, a result that would be contrary to this Court's decision in *Caldwell* and the Ontario  
Court of Appeal's decision in *Daly*. It would effectively obliterate any distinction between  
25 public and Catholic schools rendering the latter's constitutional entrenchment in some parts  
of the country meaningless. The preferential hiring rights of religious institutions that is  
protected in human rights legislation would also be jeopardized.
- 30 14. As is readily apparent, the outcome in this case will have a profound impact on the  
constitutionally guaranteed and entrenched rights of Catholic schools and religious institutions  
across the country.

**FIRST SUBMISSION**

**BCCT's decision infringed the right to religious freedom  
of TWU and its students contrary to s. 2(a) of the  
*Charter*<sup>1</sup>.**

- 35 15. While on one level this case is about BCCT offering TWU and its students the unpalatable  
choice of abandoning their religious beliefs in exchange for certification and public approval,

---

<sup>1</sup> s. 2(a) "Everyone has the following fundamental freedoms: (a) freedom of conscience and religion"; *Constitution Act, supra*.

10 on another level it is about a public administrative body requiring a private religious body to conform to the former's undefined view of public morality.

16. As Dickson, J. noted in *Big M Drug Mart, supra*, at p. 314, "...a law which itself infringes religious freedom is, by that reason alone, inconsistent with s. 2(a) of the *Charter*".

15 *R. v Big M Drug Mart* [1985] 1 S.C.R. 295 at 314 [hereinafter *Big M Drug Mart*]

17. Considered on either level, BCCT's decision breached the right to freedom of religion of TWU and its students contrary to s. 2(a) of the *Charter*.

20 18. BCCT's insistence that TWU's teacher education program reflect BCCT's view of "Canadian, secular or *Charter* values" is not without historical precedent of questionable merit. In late 18<sup>th</sup> century revolutionary France, Robespierre and the Committee of Public Safety proposed, in furtherance of a newly created state religion, the establishment of a teacher's college that would graduate teachers trained to teach "republican laws and morality".

25

M.J. Sydenham, *The French Revolution*, Meuthen and Co. Ltd. 1965 at 217

19. By requiring a private religious institution to conform to a standard of public morality arising out of BCCT's undefined views of Canadian, secular or *Charter* values, it has, in effect, elevated these state imposed moral values to quasi-religious status.

30

20. In doing so, BCCT has brought itself within the hypothetical quoted by Dickson, J. in *Big M Drug Mart* at 332, "I would note that this approach would seem to have been taken by this Court, in its unanimous decision in *Attorney General of Quebec v Quebec Association of Protestant School Boards*, [1984] 2 S.C.R. 66. When the Court looked for an obvious example of legislation that constituted a total negation of a right guaranteed by the *Charter*, and therefore one to which the limitation in s. 1 of the *Charter* could not apply, it recited the hypothetical at p. 88:

35

10 ‘An Act of Parliament or of a legislature which, for example, purported to impose the  
beliefs of a state religion would be in direct conflict with s. 2(a) of the *Charter* which  
guarantees freedom of conscience and religion and would have to be ruled of no force  
or effect without the necessity of even considering whether such legislation could be  
legitimized by s. 1’ ”.

15 *Big M Drug Mart, supra* at 332

21. To accept BCCT’s reasoning in this case, Canadians would have to abandon their individual  
views on morality dictated by their conscience and place their faith in a standard of morality  
20 created by a government administrative body based on that body’s undefined view of  
Canadian, secular or *Charter* values - this will be a faith with few adherents.

22. By withholding a public benefit from TWU and its students, BCCT was trying to coerce them  
into abandoning religious views which for them were “essential defining features of leading  
25 a moral life”<sup>2</sup>.

*Adler*, per L’Heureux-Dubé, J. at 658; and see *Big M Drug Mart* at 336 where  
Dickson, J. notes, “freedom” is primarily characterized by the absence of coercion or  
restraint.

30 23. BCCT’s decision contravened the main purpose underlying s. 2(a) of the *Charter* which is to  
promote the idea of the “centrality of the individual conscience and the inappropriateness of  
governmental intervention to compel or constrain its manifestation”.

*Big M Drug Mart* at 346

35 **SECOND SUBMISSION**

**BCCT’s decision contravened the right to freedom of  
expression of TWU and its students contrary to s. 2(b) of  
the *Charter*<sup>3</sup>.**

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<sup>2</sup> The situation in this case is no different than that as quoted by Dickson, J. at 307-8 in *Big M Drug Mart* from *Sherbert v Venner*, 374 U.S. 398 where the court said, “The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against the appellant for her Saturday worship”.

<sup>3</sup> s. 2(b) “Everybody has the following fundamental freedoms: (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication”. *Constitution Act, supra*.

10 24. It is readily apparent that BCCT and Rowles, J.A. were not concerned about students who held views similar to TWU's students and attended non-religious teacher education programs. They were mainly concerned with TWU's community standards agreement which they claimed openly endorsed "discriminatory beliefs and practices".

*Trinity Western C.A., supra*, per Rowles, J.A. para. 248

15

25. It was not only because TWU and its students held these beliefs they were censured: it was because they openly disclosed their moral views in a written document – the community standards agreement.

20

26. BCCT intentionally set out to censor this expression by imposing a burden on TWU and its students which, in this case, took the form of not only withholding a public benefit but also by its public and implicit stigmatization of TWU students as homophobic and intolerant.

*Big M Drug Mart, supra*, at 307-08

25

27. Provided an expression conveys meaning through a non-violent form, it will have the broad protection of s. 2(b) of the *Charter*, regardless of its content. It would be up to the government agency to justify any infringement of s. 2(b) under s. 1 of the *Charter*.

*R. v Keegstra* [1990] 3 S.C.R. 697 at 807-808, 810, 826, 827-28, 842 [hereinafter *Keegstra*]

30

28. In hate-mongering cases, this Court has consistently held there are outer limits on this *Charter* right and "... when the form of expression allegedly impinged lies further from the 'core' values of freedom of expression, a lower standard of justification under s. 1 has been applied". As a corollary where the form of expression is a "core" value, a high standard of justification will be required.

*Ross v New Brunswick School District* [1996] 1 S.C.R. 825 at 876-77 [hereinafter *Ross*]; *Keegstra, supra* at 762; *Canada (Human Rights Commission) v Taylor* [1990] 3 S.C.R. 892 at 922-23 [hereinafter *Taylor*]

40

29. BCCT has ill-advisedly attempted to draw a parallel between this case and *Ross*. On the

10 evidence, Malcolm Ross was a notorious anti-semite whose out-of-class conduct and  
 comments contributed to a poisoned environment which negatively impacted Jewish students  
 in the classroom. His hateful beliefs, based on nothing more than stereotypical assumptions  
 and ascriptions were, at best, tenuously connected to freedom of expression values<sup>4</sup>.

*Ross, supra*, at 854, 855-56, 858 and 878

15

30. On the other hand, TWU's mission statement is an expression of its Christian character  
 designed to attract students who hold views similar to those reflected in its community  
 standards agreement so that these students can study in an environment conducive to their  
 beliefs.

20

*Attorney General of Quebec v Irwin Toy Ltd.* (1989) 58 D.L.R. (4<sup>th</sup>) 577 at 612

25

31. This agreement reflects not merely its unique religious character but further expresses  
 religiously based moral values and beliefs which includes an explicit direction "to follow an  
 ethic of mutual support, Christian love in relationships, and to serve the best interests of each  
 other and the community".

30

32. The agreement is "not offered as a legalistic definition of right and wrong" by TWU but does  
 require its students to exercise voluntary self-restraint over a wide spectrum of conduct,  
 including sexual conduct, regardless of a student's creed, colour, gender or sexual orientation.  
 Anyone prepared to exercise the necessary self-restraint is welcome as a TWU student.

33. Given TWU's religious nature, the proscribed conduct requiring self-restraint is described in  
 the agreement as "biblically condemned" and "sinful" - phrases that can only hold real  
 meaning to students or others who ascribe to these religiously-based values and beliefs. That

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<sup>4</sup> In *Keegstra*, Dickson J. defined "hate propoganda" as "a term I use for convenience to denote expression intended or likely to create or circulate extreme feelings of opprobrium and enmity against a racial or religious group". *Keegstra, supra*, at 722. While religious expression is at the core of freedom of expression, hate propoganda lies at and perhaps beyond the outer limits. TWU's community standard agreement is antithetical to the definition of "hate propoganda" propounded by Dickson, J. in *Keegstra*.

10 the agreement proscribes a person's conduct and not the person is obvious as it goes on to  
 15 exhort students to demonstrate "respect for all people". To equate TWU's community  
 standards agreement with hate propaganda is misguided and dangerous.

34. BCCT's decision may amount to a form of religious persecution as it attempts to prevent this  
 15 private accredited university from communicating its belief system to the public and its own  
 adherents. As stated by this Court in *Saumur*, "freedom of speech, religion and the  
 inviolability of the person, are original freedoms which are at once the necessary attributes  
 and modes of self-expression of human beings and the primary conditions of their community  
 20 life within a legal order". (emphasis added). Given that freedom of religion is *Charter*  
 protected, TWU's community standards agreement which proudly proclaims its Christian  
 character is a "core" value of freedom of expression and, accordingly, BCCT's decision to  
 censure that expression cannot be justified under s. 1 of the *Charter*.

*Saumur v City of Quebec* [1952] 2 S.C.R. 299 at 329

25 35. As LaForest, J. held in *Ross*, "...any part of the order that is inconsistent with the *Charter* is  
 beyond the jurisdiction of the Board and cannot stand".

*Ross, supra*, at 885

### 30 **THIRD SUBMISSION**

### **BCCT's decision infringed the equality rights of TWU students and graduates contrary to s. 15(1) of the *Charter*<sup>5</sup>**

36. It is not overstatement to suggest BCCT's decision was an unprovoked and unjustified attack  
 on TWU students and graduates motivated by nothing more than the religious beliefs of those  
 35 students and graduates.

37. Justice Powell's comments in *Bob Jones University* are appropriate here: "I am unwilling to

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<sup>5</sup> s. 15(1) "Every individual is equal before and under the law and has the right to 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". *Constitution Act 1982*, R.S.C. 1985.

10 join any suggestion that the Internal Revenue Service is invested with authority to decide  
 15 which public policies are sufficiently “fundamental” to require denial of tax exemptions. Its  
 business is to administer laws designed to provide revenue for the government, not to  
 promote ‘public policy’.”

*Bob Jones University v United States* [1983] SCT-QL 1094 at para. 117; 461 U.S.  
 574

38. McLachlin, J. (as she then was) expressed similar sentiments in *Taylor*: “...rights and  
 freedoms guaranteed by the *Charter* cannot be left to the administrative discretion of those  
 employed by or retained by the state”.

20 *Taylor, supra* at 964

39. Far from granting BCCT an unfettered discretion to reject TWU’s application because the  
 community standards agreement reflected religious views it found offensive, both human  
 25 rights legislation and the *Charter* directed BCCT to accommodate such beliefs.

40. Iacobucci, J. made this clear in *Vriend* where at 560 he said, “...to the extent that there may  
 be a conflict between religious freedom and the protection of gay men and lesbians, the IRPA  
 contains internal mechanisms for balancing these rival concerns. Section 11.1 of the IRPA  
 30 provides a defence where the discrimination was reasonable and justifiable in the  
 circumstances. In addition, ss. 7(3) and 8(2) excused discrimination which can be linked to  
 a bona fide occupational requirement. The balancing provision ensures that no conferral of  
 rights is absolute. Rather rights are recognized in tandem, with no one right being  
 automatically paramount to another.” (emphasis added)

35 *Vriend v Alberta* [1998] 1 S.C.R. 493 at 560; the appellant and Rowles, J.A. were  
 also confused with regard to the issue in *Vriend*: - The court was not concerned with  
 whether King’s College had a right to terminate Vriend’s employment for religious  
 reasons, a purely private matter, but whether the exclusion of sexual orientation in  
 Alberta’s human rights legislation was contrary to Vriend’s constitutional rights as  
 40 guaranteed in s. 15(1) of the *Charter*. See *Vriend* at 535 and Appellant’s Factum,  
 para. 99.



10 41. In *Andrews*, McIntyre, J. noted at 175-76 that, “when the Human Rights Acts create  
exemptions or defences, such as bona fide occupational requirement, an exemption for  
religious and political organizations,...these generally have the effect of completely removing  
the conduct complained of from the reach of the Act”.

15 *Andrews v Law Society of British Columbia* [1989] 1 S.C.R. 143 at 175-76  
[hereinafter *Andrews*]

42. Likewise, in *Adler*, L’Heureux-Dubé, J. said at p. 659, “...s. 15(1) will involve the concept  
of accommodation for religious belief especially given its prohibition of adverse effects  
discrimination”.

20 *Adler, supra* at 659

43. BCCT’s confusion on a religious institution’s right to be accommodated in Canadian society  
is clear from its Factum: while properly admitting TWU, as a private university, is not subject  
to the *Charter* or federal or provincial human rights legislation with regard to hiring and  
admission policies (Appellant’s Factum paras. 61, 78 and 108), it then attempts to justify its  
25 decision to refuse TWU’s application on the basis its hiring and admission policies contravene  
Canadian values reflected in the *Charter* and human rights legislation. (Appellant’s Factum,  
paras. 114-119).

30 44. The greatest irony for TWU, its students and graduates surely must be BCCT’s comparison  
of TWU’s community standards agreement to the residential school system which resulted  
from an ill-conceived and somewhat coercive attempt by the Crown to assimilate its native  
population into Canada’s value system - the same thing BCCT now attempts to do with  
TWU, its students and graduates by imposing on them its own version of Canadian values.  
35 (Appellant’s Factum, para. 122)

45. On the basis of precedent, the *Charter* and human rights legislation, not to mention BCCT’s  
own admission, there can be little doubt this private accredited university has a right to insist  
students and faculty agree to abide by its Christian character as outlined in the community

standards agreement while they are at TWU. It was simply not open to BCCT to deny TWU's application for certification as a teacher's college on this basis<sup>6</sup>.

*Caldwell, supra*, 624-625; as for the Catholic position, see *Daly, supra* at 362 where Weiler, J.A. states: "Section 136 violates the denominational guarantee in s. 93 of the *Constitution* in other respects. Section 136(1) enables a school board to require the undertaking of a teacher to respect the philosophy and traditions of the separate school and no more. Such an undertaking falls well short of the active pursuit of the goal of indoctrinating students in the teachings of the Catholic religion, which is the constitutionally protected aim of the separate schools." (emphasis added).

46. The second reason BCCT refused TWU's application was its assumption TWU students and graduates would discriminate against gays and lesbians in the public school classroom because of their religious views on the immorality of homosexual sexual conduct as stated in TWU's community standards agreement.

47. It is interesting and somewhat contradictory to note BCCT made no complaint about the community standards agreement's proscription of extra-marital sex, especially when one considers this Court's decision in *Miron v Trudel* which found marital status an analogous ground under s. 15 of the *Charter*.

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

48. Because there was no evidence to support it, the assumption that TWU graduates would act improperly had to be based on the presumed personal characteristics attributed by BCCT to TWU students and graduates which, in turn, were based solely on their religious beliefs and association with TWU and not on their individual merits or capabilities. As a result, BCCT's decision was clearly discriminatory.

*Andrews, supra*, at 174-75

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<sup>6</sup> This intervener also agrees with the respondents' submission in para. 61 and 62 of its Factum. Whatever the standard of review governing BCCT, it is clear in this case that BCCT had no jurisdiction to rule on whether the existence of denominational colleges or universities violates public policy. In particular, it had no jurisdiction or right to determine whether the admission policies of TWU, based as they are on Christian doctrine, violate public policy since the legislature has already spoken on this issue by acting to incorporate and accredit TWU.

10 49. As Gonthier, J. said in *M. v H.*, “Distinctions drawn on enumerated grounds...usually rely upon the stereotypical application of presumed characteristics, rather than an accurate account of the true situation, or actual abilities, circumstances or capacities”.

*M. v H.* [1999] 2 S.C.R. 3 at 15, 125

15 50. Giving BCCT the full benefit of any doubt and putting its decision in the most favourable light, its decision was an attempt to reduce or eliminate discrimination against gays and lesbians in the province’s public school system by withholding a benefit from TWU and its students who, on the basis of their religious belief as expressed in the community standards agreement, believe homosexual sexual conduct to be immoral.

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51. In justifying this objective, BCCT identified TWU’s community standards agreement with anti-semitism and racism. This comparison is unhelpful as it is hurtful because racism and anti-semitism are inherently discriminatory and harmful as they are based on stereotypical assumptions or ascriptions relative to group characteristics, and not on a person’s conduct..

25

52. In support of this comparison, BCCT argues there can be no difference between homosexual sexual conduct and the homosexual person, and by condemning homosexual sexual conduct as immoral, TWU, its students and graduates have implicitly condemned all homosexual persons.

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53. There are two reasons why this comparison and its basis are not compelling in the context of this case. First, the government action at issue (BCCT’s decision) does not create any conflict between competing *Charter* rights. The decision only has adverse impact for one group, i.e. TWU, its students and graduates. Consideration of the *Charter* rights of gays and lesbians in the abstract cannot be used by BCCT to justify its decision to infringe fundamental *Charter* rights of TWU, its students and graduates.

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*Keegstra, supra*, at 833, 834-35; *Andrews, supra*, at 175

10 54. Second, like one's view of any form of sexual conduct such as extra-marital sex, the relative  
morality of homosexual sexual conduct is an issue on which reasonable people can disagree.  
One's moral view will not be based on stereotypical assumptions or ascriptions relative to  
group characteristics but on biological reality, religion and environmental factors relative to  
15 family, culture and education all of which inform a person's perception of their own moral  
conduct relative to others. It is, ultimately, a matter of individual conscience. As LaForest,  
J. noted in *Ross* at 879, the basis of the guarantee in s. 2(a) of the *Charter* is that "every  
individual is free to hold and manifest the beliefs dictated by one's conscience".

*Ross, supra* at 879

20 55. While TWU's mission statement, the community standards agreement, reflects its unique  
religious nature, it would serve to attract students who held similar moral views to that  
advocated by the University.

25 56. The situation, insofar as it relates to their moral views, would likely be no different for  
students who choose to go to other accredited but non-religious teacher education programs.  
No doubt, there are many students who chose these programs who share, for whatever  
reason, views similar to TWU students on the immorality of homosexual sexual conduct.

30 57. BCCT's decision, accordingly, only has the effect of singling out TWU students who chose  
to attend TWU because of their religious beliefs and not because of TWU's community  
standards agreement which merely reflected moral views its students probably already held.  
As Justice McLachlin said in *Adler, supra* at 717, "The essence of s. 15 is that the state  
cannot use choices like choice of religion as the basis for denying equal protection and benefit  
35 of the law".

*Adler, supra*, at 717

58. BCCT's decision results in the assumption that TWU students and graduates are likely to be  
homophobic and discriminatory while making no similar assumption with regard to those

10 students who hold similar views but attend non-religious teacher education programs<sup>7</sup>.

59. There was no evidence before BCCT that other non-religious teacher education programs required their students to accept the morality of homosexual sexual conduct; or that such programs re-educated their students in Canadian, *Charter* or secular values; or that such re-  
15 education would cause these students to abandon their individual views on that conduct. Importantly, there was no evidence that TWU's curriculum promoted discrimination against gays and lesbians - on the contrary, TWU students were exhorted to show love and respect for all people.

20 60. Because of their association with TWU, a student's religious beliefs and moral views are public, leading that student to be marked for special and discriminatory treatment by BCCT relative to other students in non-religious teacher education programs. In relation to students who held views similar to TWU students but attended non-religious, teacher education programs, TWU students and graduates were burdened by BCCT's decision as follows:

- 25
- i They could not complete their course work for teacher accreditation at their chosen university, TWU;
  - ii They would not be allowed to teach in the public school system until they had  
30 allegedly been re-educated in Canadian, secular or *Charter* values at Simon Fraser University;

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<sup>7</sup> See *M v H* [1999] 2 S.C.R. 3 where this court found the impugned legislation violated the *Charter* because it discriminated against homosexual common law couples when compared to heterosexual common law couples, solely on the basis of sexual orientation, an analogous ground under s. 15. Likewise, in *Miron, supra*, the majority of this court found that denying accident benefits to unmarried spouses was discriminatory as it treated them differently than married spouses and that such discrimination was not saved by s. 1 because the legislative goal of sustaining family members was not rationally connected to the discriminatory distinction and the law impaired the right more than was reasonably necessary to achieve its goal. In this case, BCCT's decision treat students who hold the same moral views on homosexual conduct differently solely on the basis of religion.

10           iii       BCCT’s decision stereotyped TWU students and graduates as homophobic, intolerant  
and bigoted on the basis of nothing more than their religious beliefs. A more harmful  
attack on the dignity of these Christian students would be hard to imagine.

15                   L’Heureux-Dubé’s, J. comments in *Adler, supra* at 661 are apropos: “In today’s  
secular society, it stands to reason that religious sub-groups which have attempted to  
maintain a non-secular lifestyle are even more vulnerable to stereotype, social  
prejudice and marginalization.”

20           61.       BCCT’s decision draws a formal distinction based on their religious beliefs between TWU  
students and graduates on the one hand, and those students and graduates who attend non-  
religious teacher education programs on the other; accordingly, they are subject to differential  
treatment based on an enumerated ground in s. 15(1) of the *Charter*; the differential treatment  
imposes a burden and withholds benefit from them in a manner which reflects the  
stereotypical application of a presumed group characteristic and which also has the effect of  
25       promoting the belief that TWU students and graduates are less capable than others and are  
less worthy of recognition as students and graduates than other students and graduates who  
hold similar views but attend non-religious teacher education programs.

*Law v Canada* [1999] 1 S.C.R. 497 at 548-49

30           62.       Furthermore, the normative thrust of BCCT’s reasoning does not serve to protect or  
ameliorate the position of homosexuals as a group, since it serves to deny the very right that  
they claim for themselves, namely the right to be judged on the basis of merit rather than on  
the basis of group affiliation or belief.

35       **FOURTH SUBMISSION**                   **BCCT’s decision cannot be saved under s. 1 of the  
*Charter*<sup>8</sup>.**

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<sup>8</sup> s(1) “The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”. *Constitution Act, supra*; the onus is on BCCT in this case to prove its decision which limited the equality rights of TWU students was reasonably justified in a free and democratic society on the preponderance of probabilities based on the following criteria: (1) the objective to be served by the measures limiting a *Charter* right must be sufficiently important, at least relating to societal concerns which are pressing and substantial in a free and democratic society,

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**Introduction**

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63. Homosexuals cannot deny devout Evangelical Christians the right to believe and espouse the view that homosexual sex is wrongful, without denying themselves the right to believe and espouse the opposite view that Evangelical doctrine is wrongful. Homosexuals, or those purporting to protect their interests, have no right to force every citizen or group to accept their sexual practices; nor do Evangelical Christians have the right to force everyone to accept their doctrine.

20

**a) Pressing and Substantial**

64. If the object of BCCT's decision was an attempt to reduce or eliminate discrimination against gays and lesbians in the province's public school system, that objective in a proper context might be sufficiently compelling to justify limitations on *Charter* rights.

*Keegstra, supra*, at 850

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65. In a proper context, there would have to be compelling evidence that gays and lesbians were subject to discrimination in the class room with TWU's community standards agreement being the source of that discrimination. Other than BCCT's speculation, there was no evidence in this case to support such suggestion. Accordingly, the object of BCCT's decision cannot be compelling when the problem it was meant to address is non-existent. As a result, BCCT's decision fails to meet the first part of the *Oakes* test.

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to warrant overriding a constitutionally-protected right or freedom; and (2) the means must be reasonable and demonstrably justified, in proportion to the importance of the objective. The proportionality test involves three components: i. the measures must be fair and not arbitrary, carefully designed to achieve the objective in question, and rationally connected to that objective; ii. the means should impair the *Charter* right as little as possible; and iii. there must be a proportionality between the effects of the limiting measure and the objective. *R. v Oakes* [1986] 1 S.C.R. 103.

10    b)    **Proportionality**      i)    **Rational Connection**

66.    In this case, there is no rational connection between BCCT's decision and its objective. Simply a desire to assist a disadvantaged group will not suffice to establish the necessary  
15    rational connection between BCCT's decision and its objective.

*Keegstra, supra*, at 852

67.    There was no evidence linking the moral views of TWU students and graduates on  
20    homosexual sexual conduct with discriminatory practices against gays and lesbians. In fact, the evidence conclusively demonstrated the opposite as TWU graduates had taught for many years in the public school system without one discriminatory incident being reported.

68.    It must be recalled TWU students are exhorted by the University to show love and respect  
25    for all people and to treat everyone with dignity. While TWU has this expressed safeguard against intolerant behaviour as part of its community standards agreement, there is no similar safeguard for students who hold similar views but attend non-religious teacher education programs. Finally, there was no evidence before BCCT that TWU students or graduates were in need of re-education in Canadian, *Charter* or secular values or that such re-education would address BCCT's concerns or promote its objective.  
30

69.    Accordingly, there was no connection at all between BCCT's decision to refuse TWU certification and its objective.

35    ii)    **Minimal Impairment**

70.    BCCT, on the basis of its interpretation of the *Teaching Profession Act*, SBC, 1987, c. 19, appropriated for itself a right to make public policy decisions based on its view of Canadian, secular or *Charter* values.



10 71. This was nothing more than a self-generated right to discriminate against TWU, its students and graduates on the basis of religious beliefs BCCT found offensive.

72. As BCCT did not define *Charter*, Canadian or secular values, TWU, its students and graduates being the objects of its opprobrium could only guess at what those values might be.  
15 This undefined standard based on self-generated power was over-broad and vague and cannot be justified as minimal impairment on any basis.

*Keegstra, supra*, where McLachlin, J. quotes from Tribe at 818; and *Keegstra* at 856-61; *Taylor, supra* at 959, 970

20 73. In its ill conceived attempt to weigh, in the abstract, *Charter* rights of gays and lesbians with those of TWU students and graduates (while ignoring the recommendations of its own sub-committee to approve TWU's application), BCCT managed to discriminate against the latter without providing any appreciable benefit to the former.

*Keegstra, supra*, at 833, 834-835


25 74. The effect of BCCT's discrimination against TWU, students and graduates is extreme and serious as it affects their professional reputation and goes directly to the heart of the rights guaranteed in ss. 15(1), 2(a) and 2(b) of the *Charter*. BCCT's decision is not capable of justification under s. 1 of the *Charter* and cannot be allowed to stand.

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**PART IV - ORDER SOUGHT**

75. That the appeal be dismissed.

35 ALL OF WHICH IS RESPECTFULLY SUBMITTED

  
\_\_\_\_\_  
WILLIAM J. SAMMON  
Counsel for the Intervener,  
The Canadian Conference of Catholic Bishops

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