

THE CASE OF CHRISTIAN HORIZONS

CCCC Staff Report

Brief Summary of Facts

On April 15, 2008, the decision in *Heintz v. Christian Horizons* was released by the Human Rights Tribunal of Ontario.

Christian Horizons (CH) is a large Christian organization providing residential and other services to individuals who have developmental and physical handicaps. Ms. Connie Heintz was a CH employee from 1995 until she resigned in 2000. During this time, CH required its employees to affirm the organization's Statement of Faith and abide by its Lifestyle and Morality Statement. By way of background, this statement was developed in order to comply with the 1992 Ontario Human Rights decision in *Parks v. Christian Horizons*. In 2001 Ms. Heintz filed a human rights complaint arguing that the Lifestyle and Morality Statement, and in particular the prohibition of same-sex relationships, violated the Ontario Human Rights Code (Code). All attempts by CH to settle this matter were rejected by the Human Rights Commission, including the two amicable settlements reached between Ms. Heintz and CH. This resulted in a lengthy trial of 40 days involving the testimony of 21 witnesses.

The Code provides that employment rights are not infringed where a "religious . . . organization that is primarily engaged in serving the interests of persons identified by . . . creed . . . employs only . . . persons similarly identified." The Chair acknowledged that CH was a religious organization but decided that the applicable exception did not apply to CH. CH pointed out that it had already established that it qualified for the exception in the *Parks* case, where the Tribunal had accepted that CH had two primary interests. It served primarily the interests of persons who self-identified as Evangelical Christians who had an interest

in providing care and support to individuals with disabilities, and it served individuals with disabilities.

The Chair of the Ontario Human Rights Tribunal, Michael Gotteil, decided that CH could not primarily serve two sets of interests. He rejected that CH was primarily serving the interests of Christians and decided that CH was only serving the interests of individuals with disabilities without consideration of that individual's creed. Since CH had chosen not to restrict its services to "co-religionists", and to do "works of charity and mercy in the broader community", it did not qualify for the exception. Consequently it discriminated by requiring employees to sign and conform to the Lifestyle and Morality Statement.

The Chair stated that even if he had decided that CH primarily served Christians, CH would still not qualify for the exception. He stated that restricting employment to individuals similarly identified by creed (and in this case those who adhered to the Lifestyle and Morality Statement) was not, objectively speaking, a reasonable and bona fide qualification. He went on to state that CH had not provided an environment free from harassment and discrimination since it had offered Ms. Heintz Christian pastoral counselling for the purpose of spiritual restoration, which he deemed to be "profoundly disrespectful and oppressive", and had created or permitted a poisoned work environment, and had acted on discriminatory views in matters of human resources. The human resource matters related to the work environment, performance appraisals, discipline and how CH managed and responded to the allegations by a co-worker of resident and personal abuse by Ms. Heintz. Contrary to the focus of media, the Chair stated in the decision that CH's public funding was not a relevant fact in making his decision.

In Summary, the Chair Made the Following Orders:

- 1) CH must pay Connie Heintz \$8,000 general damages for the 'serious and harmful' discrimination resulting from the imposition of the Lifestyle and Morality Statement, pay her \$10,000 relating to a poisoned work environment and \$5,000 for the related wilful and reckless infliction of mental anguish;
- 2) CH must develop and adopt an anti-discrimination and anti-harassment policy and provide human rights training for all employees and managers.
- 3) CH must stop using the Lifestyle and Morality Statement as a condition of employment.




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4) CH must review its employment policies, in consultation with the commission.

5) CH must submit a report of its plans to ensure employment policies comply with the Code. It must submit the report to the Tribunal, as well as Ms. Heintz and the Commission, who are permitted to make submissions with respect to the report.

Concerns With the Decision

Since April 15, 2008, considerable time and energy has been expended to determine an appropriate response to Heintz. In May, CCCC and The Evangelical Fellowship of Canada (EFC) held meetings to hear the concerns of some charity leaders. CCCC and EFC also consulted with Christian Legal Fellowship and 25 leading constitutional, human rights and charities lawyers from across Canada. There was a consensus that this decision is significant and has the potential to impact Christian organizations across Canada. There

is concern that the Code and a large body of case-law were applied very narrowly and incorrectly. Consider that if the decision is left unchallenged, potentially:

- a Christian charity that is engaged in evangelizing those who are not members of the sponsoring church would not be permitted to restrict hiring to believers;
- a Christian charity that serves the broader community would be seen as not primarily serving a Christian community and therefore not be able to impose faith-based requirements on employment, including use of a Lifestyle and Morality Statement;
- holding to values similar to the CH Lifestyle and Morality Statement could mean a charity "runs a serious risk of being a poisoned work environment";
- an offer of Christian pastoral counselling

could violate the Code and contribute to a poisoned work environment;

- a Christian charity could be forced to amend all its human resource policies in consultation with a human rights Commission;
- the decision negatively affects freedom of religion in that it strictly curtails the ability of religious groups to define themselves; and
- the decision negatively affects freedom of association in that it limits the freedom of religious groups to have their members associate freely with each other without challenge from others not affiliated with the group.

Moving Forward

CH has filed an appeal of the finding that they discriminated against Ms. Heintz by requiring her adherence to the Lifestyle and Morality Statement, and all the other findings

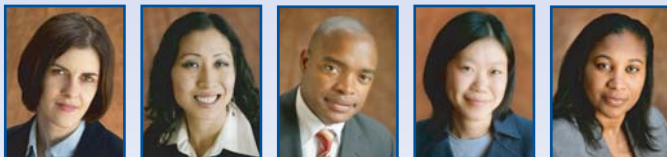
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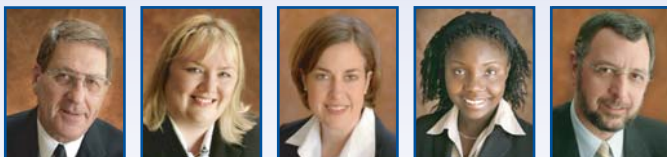
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concluding that they violated the Code. They are not appealing the specific order to stop using the Lifestyle and Morality Statement, but are appealing all the other orders.

The legal process allows CCCC, EFC and other interested groups to request being appointed as interveners in the appeal. Becoming an intervener allows non-parties the opportunity to provide additional information and perspectives to the court for it to consider when deciding the appeal. Becoming an intervener particularly allows non-parties the ability to voice their concerns with the decision and its impact, including on the issue of Lifestyle and Morality Statements, which as noted above is not being appealed by CH. CCCC and EFC intend to respond by each applying for intervener status to represent their unique issues and concerns to the court. CCCC is particularly concerned about the ability of a charity to define itself as Christian, to define what that means, to hire employees accordingly, and to still minister

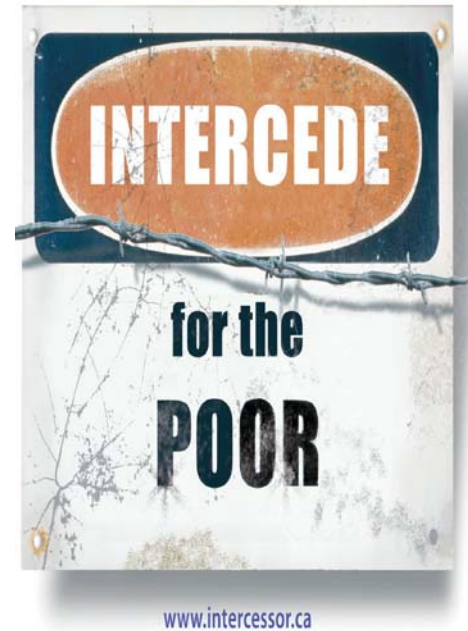
to the public without losing their Christian identity. The legal process is expected to be lengthy and to go up through several levels of court, including possibly the Supreme Court of Canada. It is expected to take considerable resources. In representing the various concerns of Christian charities in Canada, CCCC and EFC will be asking for financial support in the near future. CCCC and EFC are also considering a parallel and supportive challenge to the constitutionality of the Code as interpreted by the Tribunal.

What Does this Decision Mean for Charities Right Now?

Questions have been asked about the need to change human resource policies in light of Heintz v. Christian Horizons. At this time no change is required, although voluntary changes are of course always at the discretion of each organization. Until all legal appeals are exhausted, the Decision will be held in abeyance. This means the Decision has no

force nor effect until the decision to the final appeal has been rendered.

The full 92 page decision is available at: <http://www.canlii.org/en/on/onhrtdoc/2008/2008hrto22/2008hrto22.html>.



Did You Know

Even though the Do Not Call List scheduled to launch on September 30, 2008, does not apply to charities, they will still be required to register and pay fees for this regime?

The Canadian Radio-television and Telecommunications Commission (CRTC) released this decision on January 28, 2008. An appeal has been initiated by the charitable sector to the federal cabinet to overturn this CRTC Ruling. The federal cabinet has one year from the date of the original decision to make changes. As information becomes available, CCCC will provide updates.

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