Hfx No. 427840

Supreme Court Of Nova Scotia

Between:

Trinity Western University and Brayden Volkenant

Applicants

and

Nova Scotia Barristers' Society

Respondent

and

Attorney General of Canada, Association for Reformed Political Action, Canadian Council of Christian Charities, Catholic Civil Rights League and Faith And Freedom Alliance, Christian Legal Fellowship, Evangelical Fellowship Of Canada and Christian Higher Education Canada, and Justice Centre for Constitutional Freedoms

Interveners

BRIEF OF THE INTERVENER CANADIAN COUNCIL OF CHRISTIAN CHARITIES

BARRY W. BUSSEY
DEREK B. M. ROSS
1-43 Howard Ave.
Elmira, ON N3B 2C9

Tel: (519) 669-5137
Fax: (519) 669-3291
Email: barry.bussey@cccc.org

Counsel for the Intervener, Canadian Council of Christian Charities

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I. OVERVIEW

1. "A religious incident reverberates from one end of this country to the other, and there is nothing to which the 'body politic of the Dominion' is more sensitive."[1] These words were written over 60 years ago by Justice Ivan Rand, but are perhaps accentuated now more than ever in the issues raised by this judicial review.

2. In particular, this judicial review raises a matter central to a free and democratic society: that a religious community shall be free to operate its institutions in accordance with its sincerely held faith traditions and beliefs "without fear of hindrance or reprisal"[2] much less actual hindrance, interference and blatant restriction.

3. The Nova Scotia Barristers' Society (NSBS) attempts to force Trinity Western University (TWU), a private religious university, to abandon the practical and constitutionally recognized practice of its faith traditions as set out in its Community Covenant as a condition of equal participation and treatment in society.

4. It is the submission of the intervener, the Canadian Council of Christian Charities (CCCC), that the NSBS' decision amounts to nothing less than a rejection of Canada's religious heritage. It strikes a devastating blow to the very heart of religious civil society and has the effect of reducing the rich tapestry of Canadian society. The long-term preservation of freedom, diversity, integrity and Canada's social capital requires the law to be willing to accept differences of belief and practise on such controversial issues as marriage.

5. Throughout the history of Canada, religious individuals and communities have been seen as valuable partners in nation-building. The law has recognized this role by showing both deference to, and encouragement of, the practises of religious communities as they define their cultures in

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[1] *Saumur v. City of Quebec*, [1953] 2 S.C.R. 299 at 329 ["*Saumur*"], **CCCC's Book of Authorities ["CCCC Authorities"], Tab 1**.
[2] *R. v. Big M Drug Mart Ltd.*, [1985] S.C.J. No. 17 at para. 94, per Dickson C.J.C ["*Big M Drug Mart*"], **Joint Book of Authorities ["JBOA"], Tab 14**.

accordance with their own beliefs and practises. The Canadian state has encouraged religious communities through a myriad of protections in constitutional, statutory and regulatory terms, and those provisions remain in place today.

6. However, in more recent times, and as this case reflects, there has been an increasing political movement away from this accommodating approach – the state and some bodies within it that once showed deference and encouragement have now developed a more hostile attitude toward the autonomy of religious communities.

7. It is the position of CCCC that this case marks a defining moment for religious freedom in Canada. This judicial review asks whether there is still room in Canada for religious communities to define their own culture and practises within reasonable limits, or whether the strong arm of the state and subordinate actors makes such space a subject only of theoretical consideration where religious beliefs and practices are not in line with the state's so-called "values".

II. FACTS

8. CCCC was granted leave to intervene in this judicial review, to file a written submission of 20 pages, and to make oral arguments not exceeding 20 minutes by the Order of the Honourable Justice Kevin Coady on September 5, 2014. The CCCC accepts the facts as set out in the Applicants' Brief.

III. ARGUMENT

A. Canadian Law's Respect To The Right of Religious Institutions to Make Rules for Internal Purposes

9. Respect for religious communities runs deep in the Canadian experience. Canadian law and public institutions have long held religion in high regard, granting special exemptions in a myriad of ways that indicated that there was an innate understanding of the important role that religion plays in Canadian society. A short review of this treatment by Canadian law and public institutions lays the context for why the NSBS's rejection of the TWU School of Law violates the longstanding respect of

religious institutions and traditions that form Canada's multicultural heritage recognized as a mandatory aspect of all Charter interpretations by Section 27.

10. The unique character of Canada – being a home to a large number of Roman Catholic citizens in the 18th Century – meant the British Crown had to ensure that religious freedom would be given to the people of the territory. Justice Rand in *Saumur v. City of Quebec* provides a brief history:

> The Christian religion, its practices and profession, exhibiting in Europe and America an organic continuity, stands in the first rank of social, political and juristic importance. The Articles of Capitulation in 1760, the Treaty of Paris in 1763, and the Quebec Act of 1774, all contain special provisions placing safeguards against restrictions upon its freedom, which were in fact liberations from the law in force at the time in England. The Quebec Act, by sec. 5, declared that His Majesty's subjects,
>
> > professing the religion of the Church of Rome of and in the said Province of Quebec, may have, hold and enjoy, the free exercise of the religion, of the Church of Rome, subject to the King's supremacy ...
>
> and, by sec. 15, that
>
> > no ordnance touching religion ... shall be of any force or effect until the same shall have received His Majesty's approbation.
>
> This latter provision, in modified form, was continued by sec. 42 of the Constitutional Act of 1791:
>
> > whenever any act or acts shall ... in any manner relate to or affect the enjoyment of or exercise of any religious form or mode of worship
>
> ....
> From 1760, therefore, to the present moment religious freedom has, in our legal system, been recognized as a principle of *fundamental character*; and although we have nothing in the nature of an established church, that the untrammelled affirmations of religious belief and its propagation, personal or *institutional, remain as of the greatest constitutional significance throughout the Dominion is unquestionable*.... [F]reedom 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 life* within a legal order.[3] [emphasis added.]

11. This respect for religious freedom and for religious communities to practise their faiths was also extended to other religious groups who came to settle in Canada. As a result, religious

[3] *Saumur, supra* at p. 329, **CCCC Authorities, Tab 1.**

communities have come to rely on the promises of Canada to protect them, and their way of life, from being swallowed up in the prevailing culture, customs, and opinions that might oppose their religious sentiments.

12. For example, deeply held convictions such as the refusal to bear weapons of war, and the requirement to educate children in religious schools were honoured by Canada.[4] When time of war came during the 20th Century, Canada was true to its promises and did not conscript the young men in the Mennonite community. On June 18, 1940, Prime Minister Mackenzie King rose in the House of Commons and declared:

> I wish solemnly to assure the House and the country that the government has no desire and no intention to disturb the existing rights of exemption from the bearing of arms which are enjoyed by the members of certain religious groups in Canada, as for instance the Mennonites. We are determined to respect these rights to the full.[5]

13. Canada can be rightly proud that not even a declaration of war could negate the promise of exemption to the historic peace churches. It is an attitude of respectful regard for religious community.

14. Not only were religious communities given exemption from military service, but they were also guaranteed protection for their schools. For example, an Order-in-Council in 1873 stated:

> That the Menonites (*sic*) will have the fullest privilege of exercising their religious principles, and educating their children in schools, as provided by law, without any kind of molestation or restriction whatever.[6]

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[4] In 1872, an Order in Council provided the Mennonites in Russia the following promise: "The Hon. The Minister of Agriculture to whom the above Despatch & enclosures were referred, reports that it is expedient to give the German Menonites (sic) in Russia the fullest assurances of absolute immunity from Military Service, if they settle in Canada". Order-in-Council Number 1872-1043 B. Approved Date: 1872/09/25. Reference: RG2, Privy Council Office, Series A-1-a, Volume 300, Reel C-3301, **CCCC Authorities, Tab 2.**

[5] Rt. Hon. Mackenzie King, June 18, 1940, House of Commons Debates, 18th Parliament, 6th Session : Vol. 1, p. 904, **CCCC Authorities, Tab 3.**

[6] Order-in-Council Number: 1873-0957, Approved Date: 1873/08/13, Reference: RG2, Privy Council Office, Series A-1-a, volume 313, Reel C-3305, **CCCC Authorities, Tab 4.**

15. While this protection did not provide public funding, it was in harmony with the Canadian government's policy of allowing religious communities to protect their own identity as a community. Indeed, the *Constitution Act, 1867*[7] guaranteed special protections for religious schools.

B. Canadian law continues to protect the autonomy of religious institutions

16. Canada's historical practise to favour religion and respect the autonomy of religious communities is an important part of the multicultural heritage and continues to be reflected in our law.

17. For example, human rights legislation continues to allow religious communities to discriminate in their hiring practises based upon their religious belief and practise.[8] Our legal regime also recognizes religion in such matters as providing for special legislation for the ownership of land.[9] In addition, the law recognizes numerous special religious exemptions[10] including exemptions from:

- consumption or sales tax on religious literature[11]
- property tax[12]
- regular school activities for religious observance[13]
- entertainment tax[14]
- having photographs taken for gun license[15]
- having to eat the regular food in prisons[16]

18. One of the better known special treatments of religion is found in Canada's charity law which allows religious organizations to receive registered charitable status and the consequent charitable tax donation privileges for the advancement of religion.[17] The *Income Tax Act* specifically protects

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[7] Section 93, *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.).
[8] *Human Rights Act*, c. 214 R.S. N.S., 1989, s. 6(c)(ii).
[9] For example, *Religious Congregations and Societies Act*, R.S. 1989, c. 95.
[10] See Appendix B.
[11] *Excise Tax Act*, RSC 1985, c E-15, Sched. III, Part III, s. 1.
[12] For example, *Assessment Act,* R.S. N.S., c. 23, s. 5(1)(b).
[13] *Schools Act, 1997*, SNL1997 Chapter S-12.2, s. 10.
[14] *City of St. John's Act*, RSNL 1990, c C-17, s. 271(1).
[15] *Firearms Licences Regulations*, SOR/98-199, s. 14 (2).
[16] *Correctional Services Act,* SNS 2005, c 37, s. 58(2).
[17] The *Income Tax Act,* R.S.C., 1985, c. 1 (5th Supp.) does not define what is charitable. The Canada Revenue Agency (CRA) must therefore rely on the common law definition, which sets out the four heads of charity including

religious charities from tax penalties due to exercising religious freedom on the issue of same-sex marriage.[18]

19. These are but a small sampling of special treatment that Canadian law continues to provide religious communities. The point of this reiteration of special treatment that religious communities and institutions receive is to stress the historical and current reality of the place of religion within Canada's multicultural framework. Not only has religious belief been protected but so too has religious acts based on those beliefs. Certainly within the confines of religious communities (even when their religious enterprises entered the "public sphere") the law has rightly been loathe to interfere.

C. The Law In Canada Recognizes the Public Nature of Religious Belief.

20. As noted in the examples cited above, religious freedom has historically been granted broad protection and has been understood to protect the ability for the individual and the group to manifest their belief through action in society itself, not just in religious ghettos. This was specifically recognized in the majority decision in *Big M Drug Mart Ltd*, written by Chief Justice Brian Dickson:

> The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest belief by worship and practice or by teaching and dissemination. But the concept means more than that.
> ...
> Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience. [19]

21. This broad protection of religious freedom, however, has been increasingly narrowed in recent cases, and CCCC fears the present one may follow suit. In its report, for example, the NSBS

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the advancement of religion, most recently confirmed in the Supreme Court of Canada decision in *Vancouver Society of Immigrant & Visible Minority Women v Minister of National Revenue*, [1999] 1 S.C.R. 10. at paras. 42 and 144, **CCCC Authorities, Tab 5.**

[18] *Income Tax Act*, RSC 1985, c 1 (5th Supp), s. 149.1(6.21). This was a consequential amendment to the *Civil Marriage Act*, necessitated by challenges threatened to religious communities by certain activists at the time.

[19] *Big M Drug Mart, supra,* at paras. 94-95, **JBOA, Tab 14.**

Executive Committee noted that TWU "can continue to believe in the sanctity of marriage between a man and a woman so long as the actions in that regard do not negatively affect LGBT individuals."[20] However, this reasoning ignores the fact that religious freedom protects belief and action, even those that might be perceived as having a "negative affect" on those who do not share the particular beliefs of the religious community at issue – when those beliefs, as here, are not against public morals or in breach of Charter rights themselves.

22. Religion is not solely a private matter but radiates from the person and the community. It finds expression on its own terms. Whether that expression is in ritual and rites found in the worship services of the religious community or in the way the individual or community conduct its affairs and missions – religion will find expression and public action. The challenge for the liberal democracy is to address religious action that is seen to be beyond what society deems appropriate. Although religious freedom has limits, as do all rights, the threshold for limiting those rights is not whether their exercise have a "negative affect", but whether such limitations "are **necessary** to protect public safety, order, health or morals or the fundamental rights and freedoms of others".[21] This formula was not code for a legal steam-roller set up to homogenize difference and diversity in directions that favour solely the interests of the increasingly strident and "totalistic" voices of certain groups of citizens against those with whom they disagree.

23. In the 2001 case involving TWU, where another subordinate licensing body (the B.C. College of Teachers) rigourously challenged TWU, the Court decided that "[T]he proper place to draw the line in cases like the one at bar is generally between belief and conduct."[22] However, as Professor Iain Benson recently noted, "[i]f a line is drawn too mechanistically between, say 'belief

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[20] Executive Committee of Nova Scotia Barristers' Society, "Memorandum To Council: Trinity Western University Proposed School of Law – Options for NSBS," April 16, 2014, p. 18, **CCCC Book of Authorities, Tab 21.**
[21] *Big M Drug Mart, supra,* at para. 95, **JBOA, Tab 14**.
[22] *Trinity Western University v. BC College of Teachers*, [2001] S.C.J. No. 32, at para. 36 ["*Trinity Western*"], **JBOA, Tab 26**.

and conduct' then the public aspects of belief and associational life are at risk of evisceration."[23] To suggest that religious freedom does not extend beyond mere belief where actions might have a negative affect would drain s. 2(a) of the *Charter* of any meaning. Religious freedom, by necessity, must not only protect the right to believe but the right to **declare** those beliefs openly and without fear of hindrance and the right to **manifest** those beliefs by worship and **practice,** by **teaching** and **dissemination**, and by **religious practice**.[24]

24. Indeed even the most oppressive, totalitarian regimes have allowed citizens freedom to "believe" as they wanted. It was only when one attempted to **act** upon those beliefs that they were persecuted. William Tyndale was surely free to believe that the Bible should be made available in the common language, provided that he not actually do anything about it; it was his religious act of translating the Bible that led him to be burned at the stake. It was the Mennonites' **practise** of adult baptism that caused them to be systematically drowned in the lakes and rivers of Europe, not their simple belief in the doctrine. Even today, thousands of believers are being brutalized around the world because they dare to **act** on their beliefs.

D. The Proportionate Principle's Blinder To Bias

25. In cases subsequent to *TWU v. BCCT,* the Supreme Court has acknowledged that there must be further analysis in determining where public manifestation of religious belief must yield in favour of the conflicting right. The Supreme Court has settled on the principle of proportionality as the analytical tool to find the dividing line. However, as will be shown below, there may be an unrealistic expectation that this principle eliminates all bias and is therefore neutral.

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[23] Iain T. Benson, "What Divides, What Joins and Who Decides?: Diversity, The Common Good and Limited Law," (2015) *Journal for Juridical Science*, Vol. 39 (forthcoming, pages not yet determined), p.21, **CCCC Authorities, Tab 6.**

[24] *Big M Drug Mart, supra,* at paras. 94-95, **JBOA, Tab 14**; *Reference re Same Sex Marriage,* [2004] S.C.J. No. 75 at para. 57 ["*Same Sex Marriage Reference*"], **JBOA, Tab 19.**

26. In *R. v. N.S.*[25] the Supreme Court provided the current analytical outline based on the principle of proportionality. Religious practice will be required to yield in favour of the conflicting right if it is necessary to prevent the right's violation because reasonably available alternative measures will not prevent the violation; and the salutary effects of requiring the religious practise to yield outweighs the deleterious effects of doing so. To determine this, four questions are asked:

- First, would requiring the practise to yield interfere with religious freedom? The focus is on sincerity rather than strength of belief.
- Second, would permitting the practise create a serious risk to the conflicting right? If the practise poses no risk it may continue.
- Third, if both freedom of religion and the conflicting right are engaged on the facts is there a way to accommodate both rights and avoid the conflict between them?
- Fourth, if no accommodation is possible, then a fourth question must be answered: do the salutary effects of requiring the religious act to yield outweigh the deleterious effects of doing so?

27. The Supreme Court's "just and proportionate balance" test is its' operationalization of the *Charter's* caveat that freedom has "reasonable limits as can be demonstrably justified in a free and democratic society." However, whatever test is used by the Court, it must guard against any institutional bias that could affect the application of legal tests that seek to determine proportionality.

28. Grégoire Webber aptly critiques the proportionality principle.[26] He notes that proportionality is designed to be a technical approach. It represents the tendency in modern jurisprudence to avoid moral and political evaluations when delimiting a right. The hope is that objective analytical reason will properly address weight and balance of interests without subjective partiality. However, Webber rightly warns that "[a]rguments about constitutional rights cannot be transformed into management and mathematical measurement."[27]

29. Webber notes,

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[25] *R. v. N.S.* [2012] 3 S.C.R. 726, **CCCC Authorities, Tab 7.**
[26] Grégoire C. N. Webber, "Proportionality, Balancing, and the Cult of Constitutional Rights Scholarship," (2010) 23 Can.J.L. & Juris. 179-202, at para. 3, **CCCC Authorities, Tab 8.**
[27] Webber, *supra,* at para. 40, **CCCC Authorities, Tab 8.**

> The assumption that the identification of interests can be divorced from political judgment either results from including all interests asserted by anyone to be relevant or brushes aside the prior question as to who is identifying the 'relevant' interests and according to what standard or criterion.[28]

Either way, it is a political choice and so the wider questions of what kind of political regime law is operating within are apposite and exigent.

30. Webber explains that "one of the ends of a constitutional right is to demarcate acceptable from unacceptable state action."[29] However, if such a right, in the proportionality principle, is only to be optimized (that is, to be given the widest latitude as possible so long as it does not limit another right's optimization), as opposed to maximizing its inherent value, then it cannot provide a valid marker against unacceptable State action. Proportionality would say that so long as the benefit of the legislation outweighs the "cost" to the right, "[a]nything which the Constitution says cannot be done can be done"[30] and rights would be eviscerated not, as the SCC has said about the freedom of religion, "jealously guarded."

31. Webber warns that unless we "aspire to struggle more explicitly with the moral and political reasoning inherent to all rights" then, "rights have become merely one reason among others juggled in a process of proportionality reasoning. The result is perhaps nothing short of a loss of rights."[31]

32. As Webber's critique suggests, proportionality can all too easily be subject to institutional bias in favour of one moral view verses another. Not being neutral, proportionality can then slant to the prevailing view dominant in the law. In the context of religion, the "law's understanding of religion is powerfully individualistic."[32] Given the liberal political cultures' view of actions that impair individual autonomy being "by definition evils to be guarded against,"[33] it is not surprising

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[28] Webber, *supra,* at para. 41 **CCCC Authorities, Tab 8.**
[29] Webber, *supra,* at para. 61, **CCCC Authorities, Tab 8.**
[30] Laurent B. Frantz, "The First Amendment in the Balance," (1962) 71 *Yale L.J.* 1424 at 1445 as quoted by Webber, *supra* at para. 61, **CCCC Authorities, Tab 8.**
[31] Webber, *supra,* at para. 69, **CCCC Authorities, Tab 8.**
[32] Benjamin L. Berger "Law's Religion: Rendering Culture" in R. Moon (ed) *Law and Religious Pluralism in Canada* (Vancouver: UBC Press, 2008) 264-296 at 268, **CCCC Authorities, Tab 9.**
[33] *Ibid.*, p. 272.

that the law will view religion as "a product of choice and, hence, as connected to the liberty and autonomy of the subject."[34] It is through that lens that the law is in danger of seeing religion.

33. Scepticism appears to be the current view of religion within many legal and intellectual circles. Iain Benson notes that we are witnessing the " law being used as the means of forcing one set of beliefs to be dominant."[35] Sociologist Peter Berger made the following observation after declaring that the secular theory that argued religion would fade as society became more secularist has failed. There was yet a hold out on secularization:

> There exists an international subculture composed of people with western-type higher education, especially in the humanity and social sciences, that is indeed secularized. This subculture is the principle "carrier" of progressive, enlightened beliefs and values. While its members are relatively thin on the ground, they are very influential, as they control the institutions that provide the "official" definitions of reality, notably the educational system, the media of mass communication and the higher reaches of the legal system.[36]

34. "What this means," says Benson, "is that when we are dealing with the law and the media we must recognize that these sectors are heavily over-represented by those, such as many Western journalists, judges and lawyers, who have little time for religion at best and actively wish to attack it at worst."[37]

35. Public manifestation of religious belief that does not maximize the liberal political view of individualism has become problematic. Richard Rorty, for example, argues that it would be bad taste "to bring religion into discussions of public policy."[38] "We shall not be able to keep a democratic political community going," he argues, "unless the religious believers remain willing to trade privatization for a guarantee of religious liberty."[39]

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[34] *Ibid.*, p. 273.
[35] Iain T. Benson, "The Attack on Western Religions by Western Law: Re-framing Pluralism, Liberalism and Diversity," September 20, 2013, at p. 3, online <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2328825> ["Attack on Western Religions"], **CCCC Authorities, Tab 10.**
[36] Peter L. Berger, *The De-Secularization of the World* (Grand Rapids; Eerdmans, 1999) at 34.
[37] Benson, Attack on Western Religions, *supra*, at p. 11, **CCCC Authorities, Tab 10.**
[38] R. Rorty, *Philosophy and Social Hope* (London: Penguin, 2000) at p. 169, **CCCC Authorities, Tab 11.**
[39] Rorty, at p. 170, **CCCC Authorities, Tab 11.**

36. It is CCCC's contention that Canada has not always been obsessed with relegating religious communities to the "back of the bus" as is evidenced by the special treatment of religion in the statutory and regulatory provisions noted above.

37. The animus shown by the legal profession against TWU today suggests that there is a growing consensus that religious communities have very little space in liberal political culture to define for themselves what orthodoxy will mean – even in internal matters. The question over the operationalization of the belief of traditional marriage as one man and one woman is but symptomatic of the growing desire within the legal community to force religious communities into the dominant political culture's definitions based on the individualist paradigm. It is a view that has only recently become vogue in our legal and political history.

38. This explains why for many the 2001 TWU case is, so they argue, no longer persuasive. This is an error, however, and shows just how strongly political ideology of a certain sort does not agree with the manifestation of religious belief on traditional marriage and will ignore clear precedent by the highest court to achieve its end with spurious Dylan-esque arguments that amount to little more than "the times they are a changin'." What is considered discriminatory by the NSBS was never considered discriminatory by the law, history or culture of Canada. The law has not changed. What has changed is the rising political power of those who disagree with that law, history and culture. The rule of law itself is under threat from such cavalier approaches.

39. The 2001 TWU case, is, in relevant respects, on all fours to the current litigation, involved TWU's requirement that students sign a "Community Standards" document that was seen as discriminatory against the LGBT community. The Court did not consider in 2001 that the "act" or the manifestation of (discriminatory) religious belief was the requirement to sign the Community Standards. Rather, the "act" was whether the education graduates (in that case) were discriminatory in their teaching in the public schools. There was no evidence to conclude they would be discriminatory.

40. It is submitted that the reason the Court in 2001 did not see the "act" of signing the Community Standards as an infringement of equality rights was because the law, history and culture of Canada had a historical understanding and experience of religious communities being able to determine for themselves the manifestation of their religious belief within their communities. Canadian constitutional, statutory and regulatory law sees no inherent contradiction for religious communities to make rules of inclusion and exclusion. Within a religious community religious beliefs *and practices in relation to them including Codes of Conduct*, hold as a defining essence of the community. Winnifred Sullivan recognized "[i]t is the peculiar nature of religion itself to restrict freedom."[40] She continues,

> Religion challenges the rule of law. To be religious is, in some sense, to be obedient to a rule outside of oneself and one's government, whether that rule is understood to be established by God, or otherwise. It is to do what *must* be done. To be religious is, for most people, to live *without* a certain amount of freedom. To be religious is not to be free, but to be faithful.[41]

E. The Religious Sentiment Verses The Public Sentiment

41. Today, the argument being advanced and accepted by the NSBS is that religious communities should not have the ability to limit freedom of those within its circle to conform to the religious tenets.[42] The approach of the NSBS and others within the national legal profession is perhaps the single most dangerous development against religious freedom in recent memory. To remove a religious community's ability to determine its public manifestation of religious belief is to tamper with the very core of religious freedom under the guise of protecting freedoms. This is an attempt to redefine religion in the image of one sort of "liberal" emphasis on the individual and the marginalization of the public aspects of religion – in the end it will destroy religious freedom and

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[40] Winnifred Fallers Sullivan, *The Impossibility of Religious Freedom,* (Princeton: Princeton University Press, 2005), p. 155, **CCCC Authorities, Tab 12.**

[41] Sullivan, *supra,* at p. 156, **CCCC Authorities, Tab 12.**.

[42] The NSBS Executive Committee's Memorandum to Council, *supra*, at p. 17 noted: "TWU is allowed to believe, practice, promote and value its religious beliefs – but by requiring prospective students to execute a contract that contains discriminatory statements and by threatening discipline in the event of violation of the contract, TWU exceeds the bounds of protected religious freedom." **CCCC Book of Authorities, Tab 21**

will have a devastating effect on civil society, denying the *Charter's* promise not only for religious freedom but the multicultural society promised and mandated in section 27.

42. As the law has not changed since 2001, one would expect that the Supreme Court of Canada will again conclude as it did in 2001:

> TWU is not for everybody; it is designed to address the needs of people who share a number of religious convictions. That said, the admissions policy of TWU alone is not in itself sufficient to establish discrimination as it is understood in our s. 15 jurisprudence. It is important to note that this is a private institution that is exempted, in part, from the British Columbia human rights legislation and to which the Charter does not apply. To state that the voluntary adoption of a code of conduct based on a person's own religious beliefs, in a private institution, is sufficient to engage s. 15 would be inconsistent with freedom of conscience and religion, which co-exist with the right to equality.[43]

43. What appears to be driving this debate is the underlying lack of respect that modern liberal political culture has towards a religious institution limiting sexual choice of those who want to be part of the community. Law professor Richard Moon exemplifies this sentiment when he says that public commitment to sexual orientation equality (in public schools) "will involve nothing less than a repudiation of the religious view that homosexuality is sinful."[44]

44. It should not matter whether religious beliefs and practises are popular with elite opinion. What matters is whether they **violate the law**. As already stated, this case is symptomatic of the current struggles religious communities face against very determined opposition that does not appreciate the belief and practise at issue and advances its beliefs to eradicate other viewpoints in an illiberal and, frankly, facsist set of movements. In this case we note that when marriage was redefined there were a number of specific guarantees given to religious communities to alleviate their fears of the consequences on their respective institutions. This case now justifies those fears. The guarantees included:

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[43] *Trinity Western, supra,* at para. 25, **JBOA, Tab 26.**

[44] Richard Moon, "The Supreme Court of Canada's Attempt to Reconcile Freedom of Religion and Sexual Orientation in the Public Schools," in David Rayside and Clyde Wilcox, eds., *Faith, Politics, and Sexual Diversity in Canada and the United States* (Vancouver, B.C.: UBC Press, 2011), 321 at 338, **CCCC Authorities, Tab 13.**

- The preamble of the federal *Civil Marriage Act* states that nothing in the *Act* affects the guarantee of religious freedom of members of religious groups to hold and declare their religious beliefs and the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs; and it further states that it is not against the public interest to hold and publicly express diverse views on marriage.[45]
- The Supreme Court of Canada's[46] assurance that "[t]he protection of freedom of religion…is broad and jealously guarded in our Charter jurisprudence." And that "state compulsion on religious officials to perform same-sex marriages contrary to their religious beliefs would violate the guarantee of freedom of religion" and would not be justified.
- Section 149.1 (6)(21) of the *Income Tax Act*[47] was added to ensure that a registered charity with a stated purpose of advancing religion would not be penalized because it exercises its religious freedom in relation to marriage between persons of the same sex.

45. Taken collectively, these guarantees assured religious communities of all types that religious belief and practise on marriage would be able to continue within those communities. However, the Supreme Court also made it clear that the Christian "society of shared social values where marriage and religion were thought to be inseparable" was over. Canada is now "a pluralistic society. Marriage, from the perspective of the state, is a civil institution."[48] The implication was that while marriage and religion has separated in the civil sense – that area controlled by the state – there was still recognition that within the internal functioning of a religious community there yet remained an area where marriage and religion were inseparable. This would explain why there was a strenuous effort to assure the religious communities of the on-going religious freedom protection that it is not against the public interest to hold and publically express diverse views on marriage.

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[45] *Civil Marriage Act*, S.C. 2005, c. 33 at preamble, ss. 3, 3.1.
[46] *Same Sex Marriage Reference*, *supra*, at paras. 53-54, **JBOA Authorities, Tab 19.**
[47] *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), s. 149.1(6.1).
[48] *Same Sex Marriage Reference*, *supra*, at para. 22, **JBOA Authorities, Tab 19.**

46. Trinity Western University is not unlike the many members of CCCC who are engaged in educational pursuits with a religious motivation. TWU's objects state, "The objects of the University shall be to provide for young people of any race, colour, or creed, university education in the arts and sciences with an underlying philosophy and viewpoint that is Christian."[49] TWU remains a Christian institution, and the SCC stated in 2001 it is "not for everyone" – this ought not to be understood now, as is being argued, in effect, that it is "for no one"! It continues to operate as a religious institution with the belief and religious expression of marriage as one man and one woman – *a perfectly acceptable private and public viewpoint;* therefore, it should be afforded the protections so lauded by the state back when marriage was re-defined.

47. Should TWU not be protected in its religious belief and practise on marriage despite all of the assurances the Canadian state made when it redefined marriage; despite the long and accommodating history of religious communities in Canada; despite the fact that TWU is not a state actor but a private religious community that has no onus under the *Charter* or under the quasi-constitutional human rights acts; despite the fact that the Supreme Court of Canada had already reviewed TWU's policies and found no act of discrimination that was subject of reproof; if, in spite of all of this, TWU fails to be protected then Canadian civil society will be significantly undermined and so will the credibility of the law itself.

F. Civic Society or Civic Totalism?

48. The legal profession's opposition to TWU appears to be premised on the concept that the law is all powerful and grants to civil organizations the authority to operate as the law deems appropriate for the law's own interest.[50] William Galston cautions against this view that he refers to as "civic

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[49] *Trinity Western University Act* [consolidated], **CCCC Authorities, Tab 14**.

[50] William Galston, "Religion and the Limits of Liberal Democracy," in Douglas Farrow, ed., *Recognizing Religion in a Secular Society: Essays in Pluralism, Religion, and Public Policy*, (Montreal & Kingston: McGill-Queen's University Press, 2004), 41at 42, **CCCC Authorities, Tab 15**.

totalism."[51] There are two different interests (state and civil organization) but unequal in power. Galston maintains that there must be a pluralist alternative where there is recognition of "diverse spheres of human activity; it does not understand itself as creating or constituting those activities."[52] Under this concept the law will rightly resile from seeking to enforce its conception of justice, authority, or the good life on religious communities that discriminate. His example was women's exclusion from religious offices but it would be equally applicable to this current case:

> What blocks the extension of these laws is the principle that religious associations enjoy considerable authority within their own sphere to order their own affairs and, in so doing, to express their understanding of spiritual reality. We can accept this principle of divided authority without necessarily endorsing the interpretations of gender roles and relations embedded in broader religious communities.[53]

Freedom requires public as well as private places for disagreement.

49. The law therefore has no place, as indeed the guarantees noted above indicate, to impose the civil definition of marriage and practise on religious communities such as TWU. To take away this right of TWU to conduct its own affairs is to exhibit civic totalism. Civic totalism is an apt description of Professor Elaine Craig's observation to the NSBS, "[t]he institutions that we accredit, that we recognize formally, inform our society and culture. They not only provide space for community, the institutions that we publicly sanction and empower are part of our community, part of our public community."[54] There is no place in her estimation for a religiously based university that holds a different view on marriage than the public view. It is as if state accreditation is synonymous with state endorsement of the religious belief and practise. This, as Galston noted, is

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[51] Galston, p. 43. **CCCC Authorities, Tab 15.** Also see Iain T. Benson, "Law Deans, Legal Coercion and the Freedoms of Association and Religion in Canada," June 10, 2013, The Advocate, Vol. 71, Part 5, pp. 671-675, **CCCC Authorities, Tab 16.**

[52] Galston, *supra,* at p. 47, **CCCC Authorities, Tab 15.**

[53] Galston, p. 49, **CCCC Authorities, Tab 15.**

[54] Transcript of Elaine Craig before the Meeting Of The Executive Committee Of The Council Of The Nova Scotia Barristers' Society (Halifax, Nova Scotia, February 13, 2014,), p. 14 lines 3-6, online: http://nsbs.org/sites/default/files/ftp/TWU_Submissions/2014-02-13_NSBSTrinityWesternU.pdf , **CCCC Authorities, Tab 17.**

not the case and nothing could be further from the Charter's promise of a properly "free and democratic society."

50. Canadian Council of Christian Charities is an organization of some 3,300 charities and religious organizations that has a legitimate concern that civic totalism not be imposed on its members. Rather CCCC advocates for the law's continued recognition of Canadian history that respected religious civil society and with the jurisdiction to be sovereign in their sphere of influence. It would create a positive climate of trust.

51. There are strong empirical as well as theoretical and legal grounds for what has been argued above. Robert Putnam established that when people learn to live together within trustful relationships, society does better and overall economic well-being is assured.[55] "Most fundamental to the civic community," Putnam concluded, "is the social ability to collaborate for shared interests."[56] This ability is dependent upon "social capital," which Putnam defines as "norms of generalized reciprocity and networks of civic engagement [that] encourage social trust and cooperation because they reduce incentives to defect, reduce uncertainty, and provide models for future cooperation."[57] It calls our "attention to the ways in which our lives are made more productive by social ties."[58]

52. Social capital between religion-based institutions such as TWU and professional regulators like the law societies is required to ensure the success of the multicultural framework of Canadian society. In effect, TWU's request for a law school serves as a test of the Canadian legal academy and the legal profession's commitment to the core principles of multiculturalism. That TWU faced the unprecedented re-examination of its law school proposal before the law societies in New Brunswick, Nova Scotia, Ontario, and British Columbia, (after receiving approval from the Canadian Federation

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[55] Robert Putnam, *Making Democracy Work,* (Princeton: Princeton University Press, 1993), **CCCC Authorities, Tab 18**.
[56] Robert Putnam, *Making Democracy Work,* at p. 182, **CCCC Authorities, Tab 18**.
[57] Robert Putnam, *Making Democracy Work,* at p. 177, **CCCC Authorities, Tab 18**.
[58] Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York: Simon & Schuster, 2000), p. 19 ["*Bowling Alone*"], **CCCC Authorities, Tab 19**.

of Law Societies) has struck at the heart of civil society. At issue is the question of whether social capital exists for a Christian alternative to the secularistic monopoly of legal education currently available in this country.

53. Legal academics, law faculties, and the legal professional bodies have, up to this point, shown an often callous attitude toward the religious freedom claim of TWU. Despite the fact that TWU has been acting in accordance with its constitutionally protected right to practise its religious freedom to favour the definition of marriage as between one man and one woman, TWU has been subjected to unprecedented scrutiny, surveillance, criticism, and censure by the legal profession. As Putnam observes,

> Society characterized by generalized reciprocity is more efficient than a distrustful society, for the same reason that money is more efficient than barter. If we don't have to balance every exchange instantly, we can get a lot more accomplished. Trustworthiness lubricates social life. Frequent interaction among a diverse set of people tends to produce a norm of generalized reciprocity. Civic engagement and social capital entail mutual obligation and responsibility for action.[59]

54. The legal profession, in this case, has compromised the norm of reciprocity.[60] The lack of trust exhibited by the legal community toward TWU's law school proposal has meant the system has become totally inefficient. Rather than trust the Federation's exhaustive review and decision in favour of TWU, the NSBS took the task upon itself to re-examine the application de novo. At each turn, TWU and the NSBS have had to incur additional expense, effort, time, and energy to meet the ancillary requirements of the examining law society for documentation, face-to-face consultation, and attendance at yet another public hearing of the benchers to answer the very same question decided by the Federation. It is redundant, inefficient, and unnecessary and evidence of a lack of trust and unconstitutional "hindrance." In short, it ground the national approval mechanism for law schools to a halt. We have yet to see the long-term effect of this development, but already there is

[59] Putnam, *Bowling Alone,* p. 21, **CCCC Authorities, Tab 19**.
[60] Putnam, *Bowling Alone,* p. 20, **CCCC Authorities, Tab 19**.

one result: the promise of mobility of the legal profession appears to be in serious jeopardy, as there is a patchwork of some law societies accepting TWU graduates and others not.

IV. CONCLUSION

55. Canada has a long history of protecting the religious communal realties of its citizens. Constitutional law, statutory law along with the requisite regulatory regimes, and the common law have shown a consistent pattern of respecting the sovereignty of religious communities. Despite the increasingly secularistic legal challenges, there yet remains a strong legal basis for this respect to continue. This case epitomizes the current struggles faced by religious communities and their institutions to a hostile political culture that is using the law to impose different religious beliefs and practises (in this case, marriage) than is acceptable to the institution and the communities which support it. It is an imposition that, if successful, will have a devastating effect on Christian (and other religious) charities. It would mean that there remains no bar to stop the state's ongoing incursion in the internal affairs of religious communities in Canada. Law Professor Alvin Esau states:

> But prohibiting religious organizations that believe differently from participating by their own lights in the public square has huge costs, not least of which is the violation of the freedom of religious groups to form organizations and associate with like-minded co-religionists to engage in mission work. To drive these organizations out of service, or to strip them of religion as a condition of service, so as to achieve the equality demanded by law's religion, is itself a rather illiberal approach in a pluralist society.[61]

The "freedom" spoken of in Section 1 of the *Charter* is not the freedom of Canadians to all be the same or to live or believe or teach and manifest the same things. In a very real way, our rich heritage of diversity constitutes and guarantees our unity as citizens: the approach some are taking within the law now threatens freedom and respect at its core while purporting to respect them.

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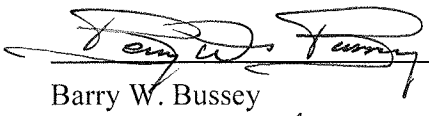
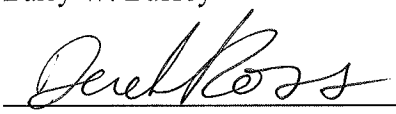
[61] Alvin J. Esau, ""Islands of Exclusivity" Revisited: Religious Organizations, Employment Discrimination *and Heintz v. Christian Horizons*," 15 (2009-2010) Canadian Lab. & Emp. L.J. 389, at 434, **CCCC Authorities, Tab 20**.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 27th day of October, 2014



Barry W. Bussey



Derek B.M. Ross
Counsel for the Intervener,
Canadian Council of Christian Charities

APPENDIX "A": LIST OF AUTHORITIES

Cases

1. *R. v Big M Drug Mart,* [1985] 1 S.C.R. 295
2. *R. v. N.S.,* [2012] 3 S.C.R. 726
3. *Reference re Same-Sex Marriage*, [2004] 3 S.C.R. 698
4. *Saumur v. City of Quebec,* [1953] 2 S.C.R. 299
5. *Trinity Western University v. College of Teachers (British Columbia)*, [2001] 1 S.C.R. 722
6. *Vancouver Society of Immigrant & Visible Minority Women v Minister of National Revenue*, [1999] 1 S.C.R. 10

Books and Articles

7. Craig, Elaine, transcript before the Meeting Of The Executive Committee Of The Council Of The Nova Scotia Barristers' Society (Halifax, Nova Scotia, February 13, 2014).
8. Benson, Iain T., "What Divides, What Joins and Who Decides?: Diversity, The Common Good and Limited Law," (2015) Journal for Juridical Science, Vol. 39 (forthcoming, pages not yet determined).
9. Benson, Iain T., "Law Deans, Legal Coercion and the Freedoms of Association and Religion in Canada," June 10, 2013, The Advocate, Vol. 71, Part 5, pp. 671-675, online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2328945.
10. Benson, Iain T., "The Attack on Western Religions by Western Law: Re-framing Pluralism, Liberalism and Diversity," September 20, 2013, at p. 3, Online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2328825.
11. Berger, Benjamin L., "Law's Religion: Rendering Culture" in R. Moon (ed) *Law and Religious Pluralism in Canada* (Vancouver: UBC Press, 2008).
12. Peter L. Berger The De-Secularization of the World (Grand Rapids; Eerdmans, 1999).
13. Alvin J. Esau, ""Islands of Exclusivity" Revisited: Religious Organizations, Employment Discrimination *and Heintz v. Christian Horizons*," 15 Canadian Lab. & Emp. L.J. 389 2009-2010.
14. William Galston points out in "Religion and the Limits of Liberal Democracy," in Douglas Farrow, ed., Recognizing Religion in a SecularSociety: Essays in Pluralism, Religion, and Public Policy, (Montreal & Kingston: McGill-Queen's University Press, 2004).
15. Grégoire C. N. Webber, "Proportionality, Balancing, and the Cult of Constitutional Rights Scholarship," (2010) 23 Can.J.L. & Juris. 179-202.

16. Richard Moon, "The Supreme Court of Canada's Attempt to Reconcile Freedom of Religion and Sexual Orientation in the Public Schools," in David Rayside and Clyde Wilcox, eds., *Faith, Politics, and Sexual Diversity in Canada and the United States* (Vancouver, B.C.: UBC Press, 2011).

17. Robert Putnam, *Making Democracy Work,* (Princeton: Princeton University Press, 1993)

18. Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York: Simon & Schuster, 2000).

19. R. Rorty, Philosophy and Social Hope (London: Penguin, 2000).

20. Winnifred Fallers Sullivan, *The Impossibility of Religious Freedom,* (Princeton: Princeton University Press, 2005).

APPENDIX "B" –

Table of Statutory References

Excerpts from *Trinity Western University Act*, S.B.C. 1969, c. 44

3. (2) The objects of the University shall be to provide for young people of any race, colour, or creed, university education in the arts and sciences with an underlying philosophy and viewpoint that is Christian.

Excerpts from *Civil Marriage Act*, S.C. 2005, c. 33

Preamble

WHEREAS everyone has the freedom of conscience and religion under section 2 of the *Canadian Charter of Rights and Freedoms*;

WHEREAS nothing in this Act affects the guarantee of freedom of conscience and religion and, in particular, the freedom of members of religious groups to hold and declare their religious beliefs and the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs;

WHEREAS it is not against the public interest to hold and publicly express diverse views on marriage;

...

Freedom of conscience and religion and expression of beliefs

3.1 For greater certainty, no person or organization shall be deprived of any benefit, or be subject to any obligation or sanction, under any law of the Parliament of Canada solely by reason of their exercise, in respect of marriage between persons of the same sex, of the freedom of conscience and religion guaranteed under the *Canadian Charter of Rights and Freedoms* or the expression of their beliefs in respect of marriage as the union of a man and woman to the exclusion of all others based on that guaranteed freedom.

Excerpts from *Human Rights Act*, R.S. N.S., 1989, c. 214

Exceptions
6 Subsection (1) of Section 5 does not apply
...
(c) in respect of employment, to
...
(ii) an exclusively religious or ethnic organization or an agency of such an organization that is not operated for private profit and that is operated primarily to foster the welfare of a religious or ethnic group with respect to persons of the same religion or ethnic origin, as the case may be, with respect to a characteristic referred to in clauses (h) to (v) of subsection (1) of Section 5 if that characteristic is a reasonable occupational qualification, or

(iii) employees engaged by an exclusively religious organization to perform religious duties[.]

Excerpts from *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.)

Marriage for civil purposes
149.1(6.21) For greater certainty, subject to subsections (6.1) and (6.2), a registered charity with stated purposes that include the advancement of religion shall not have its registration revoked or be subject to any other penalty under Part V solely because it or any of its members, officials, supporters or adherents exercises, in relation to marriage between persons of the same sex, the freedom of conscience and religion guaranteed under the *Canadian Charter of Rights and Freedoms*.

Excerpts from *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.)

EDUCATION

Legislation respecting Education

93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:

(1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union;

(2) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec;

(3) Where in any Province a System of Separate or Dissentient Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education;

(4) In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section

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Excerpts from *Excise Tax Act* (R.S.C., 1985, c. E-15)

51. (1) The tax imposed by section 50 [Consumption or sales tax] does not apply to the sale or importation of the goods mentioned in Schedule III

...

SCHEDULE III

...

PART III

EDUCATIONAL, TECHNICAL, CULTURAL, RELIGIOUS AND LITERARY

1. Bibles, missals, prayer books, psalm and hymn books, religious tracts, Sunday School lesson pictures, books, bound and unbound, pamphlets, booklets, leaflets, scripture,

prayer, hymn and mass cards and religious mottoes and pictures, unframed, for the promotion of religion, and materials to be used exclusively in the manufacture thereof, but not including forms, stationery or annual calendars.

Excerpts from *Assessment Act.* R.S. N.S., c. 23

PROPERTY EXEMPT FROM TAXATION

Exempt property

5 (1) The following property is exempt from taxation under this Act:

...

(b) every church and place of worship and the land used in connection therewith, and every churchyard and church burial ground and every church hall used for religious or congregational purposes exclusively save only for occasions specially authorized by church authorities and for which no revenue in excess of one hundred dollars per annum is received, but in computing revenue for the purposes of this clause there shall be excluded any contribution paid towards the reasonable additional costs of upkeep imposed by the use;

Excerpts from *Medical Act.* 1995-96, c. 10,

45 Nothing in this Act applies to or prevents

...

(d) the practice of the religious tenets or general beliefs of any religious organization

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Excerpts from *Licensed Practical Nurses Act*, SNS 2001, c 7

48 Nothing in this Act applies to or prevents

...

(b) the practice of the religious tenets or general beliefs of any religious organization

---

Excerpts from *Occupational Therapists Act*, SNS 1998, c 21

Exemption from application of Act

38 Nothing in this Act applies to or prevents

...

(b) the practice of the religious tenets or general beliefs of any religious organization;

Excerpts from *Paramedics Act,* SNS 2005, c 10

37 Nothing in this Act applies to or prevents

...

(c) the practice of the religious tenets or general beliefs of any religious organization;

Excerpts from *Medical Laboratory Technology Act*, SNS 2000, c 8

Exemptions from application of Act

42 Nothing in this Act applies to or prevents

...

(b) the practice of the religious tenets or general beliefs of any religious organization;

Excerpts from *Physiotherapy Act*, SNS 1998, c 22

Exemptions from application of Act

38 Nothing in this Act applies to or prevents

...

(b) the practice of the religious tenets or general beliefs of any religious organization

---

Excerpts from *Chiropractic Act*, SNS 1999, c 4

Restrictions on application of Act

38 Nothing in this Act applies to or prevents

(a) the practice of the religious tenets or general beliefs of any religious organization;

Excerpts from *Massage Therapy Act*, SNS 2003, c 8

38 Nothing in this Act applies to or prevents

...

(b) the practice of the religious tenets or general beliefs of any religious organization

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Excerpt from *Correctional Services Act*, SNS 2005, c 37

a) Meals

58 (2) Where, in the opinion of the superintendent it is reasonable to do so, the superintendent shall provide special diets to offenders for religious, cultural or health reasons.

Excerpt from *Education Act*, SNS 1995-96, c 1

TEACHERS

Duties

26 (1) It is the duty of a teacher in a public school to

...

(m) maintain an attitude of concern for the dignity and welfare of each student and encourage in each student an attitude of concern for the dignity and welfare of others and a respect for religion, morality, truth, justice, love of country, humanity, equality, industry, temperance and all other virtues;

...

GENERAL RESPONSIBILITIES AND POWERS OF SCHOOL BOARDS

Duties and powers

64 (3) A school board may

...

(d) permit persons to offer religious studies in its schools in accordance with the policies of the school board.

...

PRIVATE SCHOOLS

Duties and rights of private school

131 (3) A private school may offer a religious-based curriculum.

Excerpt from *Firearms Licences Regulations*, SOR/98-199

PHOTOGRAPHS

14 (2) An application that is made by an individual who, for religious reasons, cannot be photographed must be accompanied by

(a) a declaration, signed by the applicant, stating that the applicant cannot, for religious reasons, be photographed; and

(b) a declaration, signed by an individual who is of the same religion as the applicant and who is authorized under the laws of a province to solemnize marriages, stating that that religion prohibits the taking of photographs of its members and that the applicant is a member of that religion.

Excerpts from *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982 (U.K.), 1982*, c. 11.

Fundamental freedoms

2. Everyone has the following fundamental freedoms:

(*a*) freedom of conscience and religion;

(*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(*c*) freedom of peaceful assembly; and

(*d*) freedom of association.

...

Multicultural heritage

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

...

Rights respecting certain schools preserved

29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.

Excerpts from *Schools Act, 1997*, SNL1997 Chapter S-12.2

Religious instruction & observances

10. (1) Where a student's parent requests in writing, the principal of a school shall excuse that student from participation in a course in religion or a religious observance conducted in the school.

(2) A parent of a student in a school may request of the school principal, giving the principal reasonable notice, that a religious observance be held in the school.

(3) A principal of a school shall, in accordance with the by-laws of the board, comply with a request of a parent with respect to a religious observance.

Excerpts from *City of St. John's Act*, RSNL 1990, c C-17.

Waiver of tax

271. (1) Where it is shown to the satisfaction of the council that the profits of entertainment are to be applied to the relief of poverty, the advancement of education, or the promotion of religion, the entertainment tax shall not be levied on the performance.
