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THE LONG ARM OF HUMAN RIGHTS LAW:

Can We Legislate Beliefs?

J. Paul R. Howard

The recent decision of the Supreme Court of Canada in Trinity Western University v. British Columbia College of Teachers, released May 17, 2001, [1]www.shibleyrighton.com/education provides an instructive focal point for discussion of the appropriate limits of human rights legislation and the law generally.

Located in Langley, B.C., Trinity Western University (TWU) is a private university and accredited member of the Association of Universities and Colleges of Canada, offering six baccalaureate degree programs and four master degrees programs. One of its programs leads to a bachelor degree in education: since 1995 TWU offered a five-year teacher training program, the first four years of which were spent at TWU with the fifth year conducted under the auspices of Simon Fraser University (SFU).

The issue arose out of TWU's private, sectarian history. TWU is associated with the Evangelical Free Church of Canada and is a member of the Council for Christian Colleges and Universities. The educational programs it offers are based on a "Christian worldview", in furtherance of which every TWU student, faculty, administration and staff member is required to sign a "Community Standards" document, part of which contains a direction to "refrain from practices that are biblically condemned", such as, "sexual sins including premarital sex, adultery, homosexual behaviour, and viewing of pornography."

TWU wanted to assume full responsibility for its program, and so, in 1987, it applied for teacher training accreditation without the involvement of SFU. The application was ultimately directed to the B.C. College of Teachers, which refused the application in 1996 because the College believed "the proposed program follows discriminatory practices which are contrary to the public interest and public policy which the College must consider under its mandate as expressed in the Teaching Profession Act." The College believed that the Community Standards were illustrative of discriminatory practices, in that "labelling homosexual behaviour as sinful has the effect of excluding persons whose sexual orientation is gay or lesbian."

When the case came before the Supreme Court of Canada, all nine members of the Court agreed that the College could legitimately consider whether the equality guarantees in the Canadian Charter of Rights and Freedoms and B.C. human rights legislation, which provide protection against discrimination based on sexual orientation, were offended by the impugned Community Standards.

However, in the opinion of the eight-person majority of the Court, the College was obliged to go further and consider also whether there was any competing interest grounded in freedom of religion and, more specifically, the impact on the religious freedoms of TWU students, who were prevented by the College's decision from expressing freely their religious beliefs if they wished to be certified as public school teachers. Reminding us that the essence of freedom of religion is the right to entertain such religious beliefs as one chooses without fear of state coercion or constraint, the majority observed that, "[w]hat may appear good and true to a majoritarian religious group, or to the state acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view."

The majority therefore held that the College was required to determine whether the rights of equality and religious freedom were in conflict in reality. But how is one to reconcile any such conflict? The proper place to draw the line, the majority answered, "is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them. Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected."

In this, said the majority, the College failed because it inferred, acting just on speculation and perception, that TWU members' religious views will have a detrimental effect on the learning environment in public schools. The Court noted that there was no concrete evidence and nothing in the Community Standards that indicates that TWU graduates will not treat homosexuals fairly and respectfully. "Indeed, the evidence to date is that graduates from the joint TWU-SFU teacher education program have become competent public school teachers, and there is no evidence before this Court of discriminatory conduct by any graduate." In the result, the decision of the College was set aside.

In my view, the majority's useful distinction between belief and conduct provides an appropriate balance between the competing interests of equality rights and religious freedoms. It is a standard more easily understood than the "overt but not illegal" reasoning of the dissenting judgment, which rejected the belief-conduct distinction and held that the act of signing the Community Standards makes the TWU student "complicit in an overt, but not illegal, act of discrimination against homosexuals and bisexuals." Moreover, it avoids the excesses of the dissent's holding that "the public interest in the public school system may also require something more than mere tolerance" and its concomitant suggestion that public school teachers and educators "may have a positive duty to ensure non-discrimination in our public schools." This would seem to subject teachers to some sort of equality rights über-duty to ensure that, not only are their actions non-discriminatory, but their personal beliefs and private thoughts transcend "mere tolerance". To my mind, that comes dangerously close to imposing liability for thought.

1 Trinity Western University v. College of Teachers (British Columbia), 2001 SCC 31. The majority judgment was written, jointly, by Messrs. Justice Iacobucci and Bastarache, with whom concurred McLachlin C.J.C. and Gonthier, Major, Binnie, Arbour and LeBel JJ. Mme. Justice L'Heureux-Dubé delivered the dissenting judgment.

Paul Howard is a lawyer practising with the firm of Shibley Righton LLP in Toronto, Ontario, and a Special Lecturer in Education Law at the Faculty of Law, University of Windsor. Paul's civil litigation practice is devoted almost exclusively to education law and other public law matters, including human rights, constitutional law and administrative law.

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readers' forum

Re **ON THE CONTRARY**, Summer, 2001.

Dear Mr. Rutledge:

I read your article in Education Canada with joy. You describe admirably the rarely expressed view that poetry is more vital to literacy than many people, including English teachers, think. We are indeed as ignorant and confused as ever out here, which means, of course, that we are as vulnerable as ever to the bottom-liners in education who will always promote grammar exercises, vocabulary lists, comprehension questions, essays written to a fixed formula, and standardized testing over the need for reading poetry aloud and often. They think that tight and technical shortcuts teach people the complex and emotional business of reading and writing. They think tight and technical approaches save money.

I have always known the bottom-liners are wrong in their emphasis, but I could never have put it as convincingly as you did. It is so good to have an ally in support of poetry in the classroom.

When I return to school in September, I will be sure to share this article with my colleagues.

Yours sincerely,

Mary Gray, Argyle Secondary School
North Vancouver, British Columbia