S.C.C. File No. 24395

IN THE SUPREME COURT OF CANADA
(On Appeal from the Court of Appeal of Alberta)

BETWEEN:

DELWIN VRIEND and GALA-GAY AND LESBIAN AWARENESS SOCIETY OF EDMONTON and GAY AND LESBIAN COMMUNITY CENTRE OF EDMONTON SOCIETY and DIGNITY CANADA DIGNITE FOR GAY CATHOLICS AND SUPPORTERS

Appellants
(Respondents by Cross-Appeal)

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA and HER MAJESTY'S ATTORNEY GENERAL IN AND FOR THE PROVINCE OF ALBERTA

Respondents
(Appellants by Cross-Appeal)

FACTUM OF THE EVANGELICAL FELLOWSHIP OF CANADA

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I. INTRODUCTION

1. The Evangelical Fellowship of Canada adopts the arguments of the Interveners, the Christian Legal Fellowship and Focus on the Family (Canada) Association.

2. If the court finds that the omission of sexual orientation from the Individual's Rights Protection Act (now known as the Human Rights, Citizenship and Multiculturalism Act, R.S.A. 1980, c. H-11.7) ("Act") constitutes a "governmental action" within the meaning of section 32(1) of the Canadian Charter of Rights and Freedoms and is an infringement of the Appellants' section 15(1) equality rights, the infringement is justified by section 1.

3. The Evangelical Fellowship of Canada opposes arbitrary discrimination against individuals. It respects the right of each person within society to make choices regarding sexuality. In the same way, it welcomes the freedom of each individual to make distinctions based on differing opinions of what is ethical and moral. The Charter does not give comfort to those who would abolish all distinctions, regardless of the consequences.

4. It is axiomatic that Charter rights are not absolute. They must not be interpreted in a vacuum, but in their appropriate factual context. It is the task of the legislature to weigh competing values and interests when enacting social policy legislation. It is not for the courts to second guess the value choices of the legislature where those choices are the result of a principled weighing of those competing interests. The courts may only override the democratic will of the elected representatives where the representatives do not follow Charter principles in such process. Differences of opinion regarding social policy issues must be resolved through judicial deference, not judicial interference.

5. The remedy sought by the Appellants may adversely impact on the rights and freedoms of other groups or individuals within society, including the right of religious

groups to establish moral standards consistent with the deeply held religious beliefs of those groups. Any analysis under section 1 must balance the rights and freedoms of all individuals. Charter rights and freedoms must be applied in a manner which will maximize, not minimize, the liberty of citizens.

II. STATEMENT OF FACTS

6. Delwin Vriend worked for The King's College, a Christian liberal arts college, as a full-time employee from September 1, 1988 to January 28, 1991. 1 Case on Appeal [hereinafter C.A.] 59.

7. The college terminated Mr. Vriend's employment because he refused to adhere to and support the policy of the college regarding homosexual conduct. 1 C.A. 69; 2 C.A. 179. The college paid him three months' salary in lieu of notice. 1 C.A. 69.

8. Part of the college's statement on homosexual practice reads as follows:

> We recognize that homosexual orientation (i.e. sexual attraction to a person of the same sex) is a condition which may not be of the person's own choosing, and as such may not be blameworthy. However, people are responsible for the way they act. Homosexual conduct, like heterosexual conduct, involves choices and is to be evaluated in light of the Bible's teachings regarding sexual conduct.
>
> Thus homosexual practice (i.e. sexual activity with a person of the same sex) and the promotion of homosexual practice as an acceptable alternative to a normative heterosexual relationship, are considered to be contrary to the College's Statement of Faith and inconsistent with its mission.

9. Mr. Vriend wrote to the Alberta Human Rights Commission and claimed that the college, in terminating his employment, discriminated against him on the basis of his religious beliefs, gender and sexual orientation. 1 C.A. 73.

10. The Alberta Human Rights Commission advised Mr. Vriend in a July 10, 1991 letter that the *Individual's Rights Protection Act* does not include sexual orientation' as a protected ground and that he could not include it in a complaint, but it was willing to receive his complaint on the basis of gender and religious belief. 1 C.A. 73.

III. POINTS IN ISSUE

11. This factum will address two points:

10

1. If the omission of sexual orientation from the Act infringes section 15(1) of the Charter is it nonetheless justified under section 1?

2. Should this court find that any such infringement is not justified by section 1, is it appropriate under section 24(1) to include within any remedy granted a constitutional exemption for religious communities and the individual members of those communities whose freedom of conscience and religion may be adversely affected?

20

IV. ARGUMENT

A. The Act is Justified in a Free and Democratic Society

a. Contextual Approach

12. Charter rights must not be interpreted in the abstract, but in their appropriate factual context. In *Edmonton Journal v. Alberta*, [1989] 2 S.C.R. 1326, 1352 (Tab 29) Justice Wilson wrote that in interpreting Charter provisions in accordance with the

30 purposive approach, the court may adopt one of two methods of interpretation. The first,

the "abstract" method, involves the examination of a right or freedom in the abstract. This examination takes place without reference to the particular factual context in which it is being applied. Justice Wilson said that in a case where there are competing values at stake, a "contextual" approach is more appropriate. She was of the view that the contextual approach brings into sharper relief the aspect of the right or freedom which is truly at stake in the case as well as the relevant aspects of any competing values.

13. Section 1 is the appropriate place to weigh various Charter values and factors in context. The courts risk overstating or understating a Charter value where the balancing of competing interests takes place without the benefit of context. In *McKinney v. University of Guelph*, [1990] 3 S.C.R. 229 (Tab 32 Respondents), Justice La Forest discussed the importance of context to the section 1 analysis with this reference:

> This balancing task, as the Court recently stated in *United States of America v. Cotroni*, [1989] 1 S.C.R. 1469, at pp. 1489-90, should not be approached in a mechanistic fashion. For, as was there said, **"While the rights guaranteed by the *Charter* must be given priority in the equation, the underlying values must be sensitively weighed in a particular context against other values of a free and democratic society sought to be promoted by the legislature".** [Emphasis added]

McKinney v. University of Guelph, [1990] 3 S.C.R. 229, 280 (Tab 32 Respondents).

14. In any section 1 analysis, courts must give equal consideration to all Charter values, including such rights as freedom of religion and freedom of association. In *The Queen v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, 336-337 (Tab 32), Justice Dickson noted the importance of equality with respect to the enjoyment of the fundamental freedoms to a truly free society:

> A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct. A free society is one which aims at equality with respect to the enjoyment of fundamental freedoms and I say this without any reliance upon s. 15 of the

> *Charter*. Freedom must surely be founded in respect for the inherent dignity and the inviolable rights of the human person. 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 hinderance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination. But the concept means more than that.
>
> Freedom can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. One of the major purposes of the *Charter* is to protect, within reason, from compulsion or restraint. Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others. 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.
>
> What 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 *Charter* safeguards religious minorities from the threat of "the tyranny of the majority".

15. In *Lavigne v. OPSEU*, [1991] 2 S.C.R. 211, 344 (Tabs 4, 31), the same point was made by Justice McLachlin in the context of freedom of association:

> Freedom not to associate, like freedom to associate, must be based on the value of individual self-actualization through relations with others. The justification for a right <u>not</u> to associate would appear to be the individual's interest in being free from enforced association with ideas and values to which he or she does not voluntarily subscribe. For the purposes of this case, I shall refer to this as the interest in freedom from coerced ideological conformity.

16. The Supreme Court of Canada cautioned against a hierarchical approach to Charter rights in *Dagenais v. C.B.C.*, [1994] 3 S.C.R. 835, 878 (Tab 12). The court refused to favour the rights protected under section 15(1) of the Charter over other rights entrenched in the Charter. Instead, it counselled a balancing of competing Charter values. Chief Justice Lamer explained the interpretive principle in this way:

> A hierarchical approach to rights, which places some over others, must be avoided both when interpreting the *Charter* and when developing the common law when the protected rights of two individuals come into conflict, as can occur in the case of publication bans, *Charter* principles require a balance to be achieved that fully respects the importance of both sets of rights.

17. The complaint in this action finds its origin in the context of Delwin Vriend's dismissal from The King's College on the ground that he acted inconsistent with the college's statement relating to homosexual conduct. The relevant provisions make a distinction between homosexual orientation and homosexual practice. It is the homosexual practice that the policy forbids.

18. Religious institutions such as The King's College have the fundamental right to adopt policies governing the moral conduct of students, employees and faculty. Notwithstanding clear Supreme Court of Canada authority to the contrary (*Caldwell v. Stuart*, [1984] 2 S.C.R. 603 (Tab 28)), Mr. Vriend attempted to use the Alberta Human Rights Commission to force a private religious organization to change or compromise its religious faith. The consequence of the college maintaining its religious integrity is the cost and inconvenience of governmental inquiries, investigations and hearings. And this is the case even if the courts ultimately uphold the religious freedom of the college and refuse to impose fines or damage awards.

19. This is not the only example of an offensive against individuals and organizations which, for reasons of conscience or religion, adhere to standards of behaviour consistent with the purposes and values of the individuals or organization. In *Trinity Western*

University v. British Columbia College of Teachers (Tab 9 AFWUF Authorities), the College of Teachers denied the application of Trinity Western University for approval of its teacher education program on the basis of the University's community standards code. The code effectively required adherence to certain religious and moral standards. Included in the code was a requirement that all employees and students refrain from sexual activity outside of marriage. The code was implemented because the University is a religious institution committed to Christian principles and values. The College of Teachers was of the view that teachers graduating from the Trinity Western program would be unfit teachers because of their Christian view of life and morality.

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20. Although not in the context of a Charter claim, Trinity Western's problem highlights the conflict which often arises in the context of moral and political decision making. In resolving these conflicts, the right to religious freedom must be a central consideration. Religious freedom is at the heart of any free and democratic society and must be a primary factor when balancing interests under section 1. Any other approach would risk the danger of political biases trumping freedom of religion. (Tab 9 AFWUF Authorities).

21. The ability of religious institutions to adopt and maintain codes of conduct for
20 their communities is fundamental to the exercise of their freedoms of conscience, religion and association. These freedoms are central to the exercise and preservation of all rights and freedoms embodied within the Charter. In *The Queen v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, 346 (Tab 32), Justice Dickson was unequivocal about the centrality of religious freedom to our constitutional democracy:

> It should also be noted, however, that an emphasis on individual conscience and individual judgment also lies at the heart of our democratic political tradition. The ability of each citizen to make free and informed decisions is the absolute prerequisite for the legitimacy, acceptability, and
> 30 efficacy of our system of self-government. It is because of the centrality of the rights associated with freedom of individual conscience both to basic beliefs about human worth and dignity and to a free and democratic

> political system that American jurisprudence has emphasized the primacy or "firstness" of the First Amendment. It is this same centrality that in my view underlies their designation in the *Canadian Charter of Rights and Freedoms* as "fundamental". They are the *sine qua non* of the political tradition underlying the *Charter*.

22. The context, then, in which the Act must be considered by this court is Justice Dickson's affirmation of the primacy of freedom of conscience for both individuals and groups. In particular, because Mr. Vriend's complaint arises out of his employment at a Christian college, this court has the benefit of the context in which freedom of religion may be implicated when sexual practices are asserted.

b. Section 1 Analysis and the Oakes Test

23. Charter rights and freedoms are not absolute. They are subject to appropriate limitation where such limitation is reasonably justified. Any section 1 analysis must take account of the competing rights and interests reflected in the relevant context in which the action arose.

24. Section 1 brings together the fundamental values and aspirations of Canadian society. To a large extent a free and democratic society embraces the very values and principles which Canadians have sought to protect and further enhance. *The Queen v. Keegstra*, [1990] 3 S.C.R. 697, 735-736 (Tab 36).

25. The proper judicial perspective under section 1 must be derived from an awareness of the synergetic relation between two elements: the values underlying the Charter and the circumstances of the particular case. A rigid and formalistic approach to the application of section 1 must be avoided. *The Queen v. Keegstra*, [1990] 3 S.C.R. 697, 737 (Tab 36).

26. This court set out the approach to section 1 in *The Queen v. Oakes*, [1986] 1 S.C.R. 103, 138-139 (Tab 24)

(a) Is there a pressing and substantial legislative objective sufficient to justify overriding a Charter protected right or freedom?

(b) Is there proportionality between the effects of the measure and the objective, and in particular:

(i) Are the means chosen by the legislature rationally connected to the legislative objective?

(ii) Do the means chosen by the legislature impair the right or freedom as little as possible? and

(iii) Do the deleterious effects of the limiting measure outweigh the advantages of the measures or is there proportionality between the effects of the measure responsible for limiting the Charter right or freedom and the objective which has been identified as of sufficient importance?

27. The nature of the proportionality test will vary depending on the circumstances. The current approach to the proportionality test involves a balancing of a number of factors, such as the nature of the right, the extent of its infringement, the importance of the right to the individual or group concerned and the broader social impact of both the impugned law and its alternative. *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143 (Tab 19 Respondents); *Blainey v. Ontario Hockey Association* (1986), 54 O.R. (2d) 513 (C.A.) (leave to appeal denied, [1986] 1 S.C.R. xii) (Tab 20 Respondents).

c. Application of Test

i. Pressing and Substantial Legislative Objective

28. The Act has as its objective the "recognition of the inherent dignity and the equal and inalienable rights of all persons" which this Intervener submits is a pressing and substantial legislative objective. However, the Act is not meant to protect from discrimination each and every choice made by members of our society. Rather, it is meant to protect the personal characteristics identified in the Act, such as race, colour and age, and to preserve the maximum freedom for individuals.

29. As the promotion of the dignity of all Albertans is a response to a pressing and substantial concern, the Act satisfies the first stage of the *Oakes* test. Its objective is of sufficient importance to warrant overriding any infringement of section 15.

ii. Rational Connection

30. The impugned provisions of the Act are rationally connected to the legislative objectives of that Act. Prohibiting discrimination on the basis of the enumerated grounds in sections 2-4, 7 and 8 of the Act protects and promotes the inherent dignity and the equal and inalienable rights of all persons embraced within the scope of the legislation.

31. The protection of personal characteristics is rationally connected to the objective of the impugned legislation. This position is supported by the reasoning of this court in *Egan v. Canada*, [1995] 2 S.C.R. 513, 608 (Tab 64 Appellants). The Supreme Court of Canada recognized it was legitimate and rational for Parliament and legislatures to extend legal status to certain groups while not extending the same benefits to other groups.

32. The legislative omission of sexual orientation from the enumerated grounds of the impugned legislation does not weaken the rational connection that exists between the legislative provisions as enacted and the declared objectives of the legislation. There is no evidence before the court that the Act is arbitrary, unfair, or based on irrational considerations. The Act has been drafted carefully and concisely and has been extensively debated. As well, there is no evidence that the Act works in opposition to the legislature's objectives.

33. The Supreme Court of Canada has recognized the fundamental differences between the Charter and human rights legislation. In *McKinney v. University of Guelph*, [1990] 3 S.C.R. 229, 262 (Tab 32 Respondents), Justice LaForest stated that "the exclusion of private activity from the Charter was not a result of happenstance...". He went on to say:

> To open up all private and public action to judicial review could strangle the operation of a society and ... diminish the area of freedom within which the individuals can act.

34. In *McKinney v. University of Guelph*, [1990] 3 S.C.R. 229 (Tab 32 Respondents) the Supreme Court recognized that the scope of human rights legislation would, by virtue of its application to private interactions, be narrower than the scope of the Charter by virtue of its public nature.

35. In that same case at 436, Madame Justice L'Heureux-Dubé commented on the permissible scope of legislative discretion and concluded that if a province "chose to enact human rights legislation which only prohibited discrimination on the basis of sex, and not age, this legislation could not be held to violate the Charter."

36. The failure to extend rights to each and every identifiable group does not impact the purpose and intent of human rights legislation.

iii. Minimal Impairment

37. In assessing whether the legislation, as drafted, impairs the right or freedom as little as possible, a consideration of the level of deference which ought to be accorded the legislature is critical. This court has accorded a greater degree of deference to legislative choices in cases of "social legislation" than it has in relation to other legislative activities. For example, a less onerous burden has been placed on the state where the legislature was seeking to balance Charter rights and values (*Ross v. New Brunswick School District No. 15*, [1996) 1 S.C.R. 825), to balance competing interests of various social groups (*McKinney v. University of Guelph,* [1990] 3 S.C.R. 229) (Tab 32 Respondents); to address conflicting social science evidence as to the cause of a social problem, (*RJR-MacDonald v. Canada*, [1995] 3 S.C.R. 199) and *Adler v. Ontario*, 140 D.L.R. 4th 385, 420 (1996 S.C.C.) (Tab 18 Respondents).

38. The Supreme Court has repeatedly highlighted the importance of judicial deference when reviewing social policy legislation. The court is concerned to allow adequate scope for Parliament to achieve its objectives. It does not want to substitute judicial opinions for legislative ones as to where to draw precise lines in formulating this type of legislation. *The Queen v. Edwards Books and Art Limited*, [1986] 2 S.C.R. 713, 793 & 794-95 (Tab 35); *Irwin Toy Ltd. v. Quebec*, [1989] 1 S.C.R. 927, 983 & 989-90 (Tab 30).

39. Unless the court can find that the legislature's choice of public policy was unreasonable, it has no power under the Charter to strike it down or to enter the legislative field and substitute its own views for that of the legislature. *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, 191 (Tab 19 Respondents).

> [T]he question is whether the Government had a reasonable basis for concluding that it impaired the relevant right as little as possible given the government's pressing and substantial objectives. McKinney v. University of Guelph, [1990] 3 S.C.R. 229,286 (Tab 32 Respondents)

40. In a section 1 review where social science evidence may be inconclusive, the legislature, in choosing its mode of intervention, need only have a reasonable basis on the evidence tendered for concluding that the qualification of the right in question impairs that freedom as little as possible given the government's pressing and substantial objectives. See *The Queen v. Butler*, [1992] 1 S.C.R. 452, 502 (Tab 33) and *Irwin Toy Ltd. v. Quebec*, [1989] 1 S.C.R. 927, 994 (Tab 30).

41. Parliament is not required to search out and adopt the absolutely least intrusive means to attain its objective, but must come within a range of means which impair Charter rights as little as is reasonably possible. *The Queen v. Chaulk*, [1990] 3 S.C.R. 1303, 1341 (Tab 34); *The Queen v. Butler*, [1992] 1 S.C.R. 452, 504-505 (Tab 33).

42. Any decision not to include sexual orientation within the Act is a decision that properly rests with the Alberta legislature. The legislative history, as recounted in the Appellants' factum at p. 9, line 19, and the Respondents factum at p. 18, line 1, reveals that the Alberta government considered amending the Act to include sexual orientation but decided against proposing such an amendment to the legislature.

43. This history demonstrates that the Alberta legislature took into consideration that, among Albertans, there exists a plurality of opinions which underlie the diversity of attitudes regarding the origin and nature of homosexuality, and the degree to which its practice should be supported or approved by society. The government's decision not to include sexual orientation in the Act followed the weighing of the competing rights and interests of individuals to equality and protection from discrimination on the one hand, and the rights of others to the freedoms of conscience, religion and opinion as set out in section 2 of the Charter.

d. The Importance of Citizens' Participation in the Democratic Process

44. If the government of Alberta is not allowed to make decisions as to whether or not sexual orientation should be either included or excluded and the matter is ultimately determined by the judiciary, then the effect is that the citizenry are prevented from taking any responsibility in decisions affecting social justice. Leaving these matters to the judiciary may have the unfortunate consequence of relieving citizens from the responsibility of reasoning together about acceptable answers to these questions of social justice in our municipal, provincial and federal political life. See Russell, P. H., "The Effect of a Charter of Rights on the Policy - Making Role of Canadian Courts", Cad. Pub. Adm. Vol. 25, No. 1 (1982) 1 at 26 (Tab 39).

45. The long-term consequence is that the citizenry will either have a limited or no role at all in the decision-making process relating to social issues. A healthy democracy is made up of citizens who remain true to their principles and actively promote those principles within society, even when the majority disagree with those principles. If the law were the only statement of morality, society's ability to change the law would be irreparably compromised. Constitutionalism demands a people that is independent but not so much as to think itself capable of governing without a constitution; it needs a sense of responsibility that is aware of the limits to responsibility. Mansfield, H. J. Jr., America's Constitutional Soul (1991) at 103, 177, 178, 217, 218 (Tab 40).

B. Constitutional Exemption

46. If Mr. Vriend were successful in this appeal and he chose to proceed with a complaint under the Act, he would ultimately fail in his action. This is because section 7(3) of the Act says that there is no prohibition of employment discrimination in the case of a "bona fide occupational requirement" (Tab 1 Appellants). Such a requirement exists in the case of the King's College. The Supreme Court of Canada explained the applicable principles in *Caldwell v. Stuart*, [1984] 2 S.C.R. 603, 624-25 (Tab 28):

> It is my opinion that objectively viewed, having in mind the special nature and objectives of the school, the requirement of a 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. It is my view that the *Etobicoke* test is thus met and that the requirement of conformance constitutes a *bona fide* qualification in respect of the occupation of a Catholic teacher employed in a Catholic school, the absence of which will deprive her of the protection of s. 8 of the *Human Rights Code*. It will be only in rare circumstances that such a factor as religious conformance can pass the test of *bona fide* qualification. In the case at bar, the special nature of the school and the unique role played by the teachers in the attaining of the school's legitimate objects are essential to the finding that religious conformance is a *bona fide* qualification.

47. Given the likelihood of this result, one might reasonably ask why either Mr. Vriend or the Intervener is pursuing this appeal with such vigor. While there is no explanation for the efforts of Mr. Vriend to engage the King's College in an inquiry under the Act, the reason for the continued interest of the Intervener is the potential far reaching implications of a decision by the courts to read sexual orientation into the Act.

48. The Act is not restricted to protection from discrimination in the employment context. However, a bona fide occupational requirement exemption is only available in relation to employment discrimination under sections 7 and 8 of the Act. Should sexual orientation be read into the Act generally, significant constitutional concerns would arise.

49. Because of the nature of the religious views of The King's College, Justice Russell's order would have compromised freedom of religion. She would have read sexual orientation into sections 3 and 4 of the Act, notwithstanding the absence of a bona fide occupational requirement exemption in those sections. Such an exemption is a constitutional imperative.

50. This is the message of *The Queen v. Videoflicks*, 48 O.R. (2d) 395, 420 & 429 (C.A. 1984) (Tab 37), [1986] 2 S.C.R. 713 (Tab 35) and *Super Sam Red Deer Ltd v.*

Lethbridge, 112 A.R. 45, 49 (Q.B. 1990) (Tab 38). In both cases, the courts determined that there was a constitutional necessity for an exemption where freedom of religion is inadvertently impacted by government.

51. An exemption is required, regardless of whether the government or the majority in society agree with the perspective of the individual or group impacted:

> Freedom of religion goes beyond the ability to hold certain beliefs without coercion and restraint and entails more than an ability to profess those beliefs openly. In my view, freedom of religion also includes the right to observe the essential practices demanded by the tenets of one's religion and, in determining what those essential practices are in any given case, the analysis must proceed not from the majority's perspective of the concept of religion but in terms of the role that the practices and beliefs assume in the religion of the individual or group concerned.
>
> ...
>
> As discussed previously, a law which prohibits certain practices which are an essential part of the person's religion must be considered an abridgement or infringement of freedoms of religion.

The Queen v. Videoflicks, 48 O.R. 2d 395, 420 & 423 (C.A. 1984) (Tab 37)

52. Given the foregoing, if the court reads the term "sexual orientation" into the Act, it must also read in a properly drafted exemption to accommodate and protect the freedom of religion of those whose religious beliefs require that certain sexual behaviours not be condoned.

V. CONCLUSION

53. The Evangelical Fellowship of Canada seeks an order that the decision of the Court of Appeal of Alberta be affirmed and that the Appellants' appeal be dismissed and the cross-appeal be allowed, with no award of costs for or against The Evangelical Fellowship of Canada.

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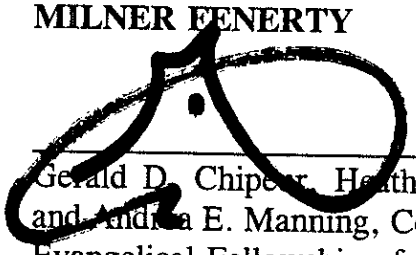
Respectfully submitted

MILNER FENERTY



Gerald D. Chipeur, Heather L. Treacy and Andrea E. Manning, Counsel for the Evangelical Fellowship of Canada

20 By order of the court, the Intervener is "entitled to ten minutes for oral argument".