

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

B E T W E E N :

ONTARIO HUMAN RIGHTS COMMISSION

The Commission
(Respondent)

- and -

CONNIE HEINTZ

Complainant
(Respondent)

- and -

CHRISTIAN HORIZONS

Respondent
(Appellant)

**FACTUM OF THE INTERVENOR,
THE EVANGELICAL FELLOWSHIP OF CANADA**

DAVIS LLP
Barristers & Solicitors
1 First Canadian Place
100 King Street West
Suite 5600, P.O. Box 367
Toronto, ON M5X 1E2

Peter Jervis (LSUC #22774A)
Tudor Carsten (LSUC #44766V)

Tel: 416.365.3506/416.365.3505
Fax: 416.369.5203/416.777.7409

Lawyers for the Intervenor,
The Evangelical Fellowship of Canada

TO: FRASER MILNER CASGRAIN LLP

P.O. Box 100
1 First Canadian Place
100 King Street West
Toronto, ON M5X 1B2

Barbara Grossman
Tel: 416.863.4417
Fax: 416.863.4592

Lawyers for the Appellant

**AND TO: ONTARIO HUMAN RIGHTS
COMMISSION**

180 Dundas Street West
7th floor
Toronto, Ontario M7A 2R9

Anthony D. Griffin
Tel: 416.314.4519
Fax: 416.326.9867

Lawyers for the Respondent

AND TO: CONNIE HEINTZ

3 Hayward Crescent
Guelph, Ontario N1G 5A5

Respondent, Acting in Person

AND TO: MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON M5H 3S1

Iain T. Benson
Tel: 416.595.8638
Fax: 416.595.8695

Lawyers for the Intervenor, Ontario
Conference of Catholic Bishops

AND TO: **BARNES, SAMMON LLP**
Barristers and Solicitors
400 - 200 Elgin Street
Ottawa, ON K2P 1L5

William J. Sammon
Tel: 613.594.8000
Fax: 613.235.7578

Lawyers for the Intervenor,
The Canadian Council of Christian
Charities

AND TO: **SACK GOLDBLATT MITCHELL
LLP**
20 Dundas Street West
Suite 1100
Toronto, ON M5G 2G8

Vanessa Payne
Tel: 416-979-6419
Fax: 416.591.7333

Lawyers for the Intervenor,
Egale Canada Inc.

TABLE OF CONTENTS

PART - OVERVIEW	1
PART II - THE FACTS	2
i) Findings of the Tribunal regarding the religious basis for the Christian Horizons mission.....	2
ii) The number of Evangelical Christian Organizations affected by the Decision.....	3
iii) The religious beliefs and values of Evangelical Christians that are impacted by the decision under appeal	3
iv) Evangelical Christians exercise their freedom of religion by manifesting their Christian faith through Christian “mission” as expressed through social service activities.....	4
v) The religious imperative for Evangelical Christians to provide social services and “good works” on a non-discriminatory basis to the entire community without distinction based on faith, race, ethnicity or other grounds of discrimination	5
vi) The impact of the decision under appeal on the freedom of association of Evangelical Christians.....	6
vii) The unequal impact of the Tribunal’s decision	8
PART III - ISSUES TO BE ARGUED.....	8
PART IV - ARGUMENT.....	9
i) First Issue - Section 24(1)(a) is a rights conferring section provision intended to broadly protect group rights.....	9
(a) The purpose of s. 24(1)(a)	9
(b) The interpretation of the second element of s. 24(1)(a) - “Primarily engaged in serving the interests of persons identified by their creed”	11
ii) Second Issue - Section 24(1)(a) has arguable ambiguity and must be given an interpretation which is consistent with <i>Charter</i> values and specifically the <i>Charter</i> values of members of religious organizations whose rights are to be protected	14
iii) Third Issue - The narrow interpretation of s. 24(1)(a) severely limits and restricts the <i>Charter</i> rights and freedoms of many Evangelical Christians in religious organizations in Ontario and across Canada	16
(a) Section 2(a) - Freedom of Religion	16
(b) Section 2(d) - Freedom of Association.....	19
(c) Section 15 - Equality Rights of Evangelical Christians.....	20

(d) Section 2(b) - Freedom of Expression.....21

(e) Section 27 - Multicultural Heritage22

iv) **Fourth Issue** - A broad interpretation of s. 24(1)(a) is consistent with both *Charter* values and is complimentary to and furthers the overall purposes of the *Human Rights Code*.....24

PART I - OVERVIEW

1. This appeal raises a fundamental issue that affects many religious organizations in Ontario and across Canada that undertake charitable work. It could have the impact of requiring them to substantially curtail and limit the charitable work they do, or require them to give up the religious character and identity of their organizations.
2. The appeal is brought from an Ontario Human Rights Tribunal decision which gave a very narrow interpretation to the preferential hiring exemption provided for, *inter alia*, religious organizations in s. 24(1)(a) of the Ontario *Human Rights Code*. Until this decision, the section had been interpreted to confer broad rights on religious groups to associate for religious activities and allow them to preferentially hire members of their faith to carry out religious activities, including religious charitable work, even if it was directed beyond their own faith group to the community at large. The decision held that the exemption only applies if the charitable work is primarily limited to beneficiaries from the organization's own faith community.
3. Effectively, the decision denies the exemption to those religious groups that do not discriminate in their charitable work. This will have an extraordinary and negative effect on many Christian charities which have, throughout the history of Ontario, served all the poor, needy and vulnerable throughout the community through religious missions. It will have the effect of marginalizing minority religious communities by limiting community involvement, or cause religious charities to give up their religious character.
4. The decision fails to give a purposive and contextual interpretation to s. 24(1)(a) in light of its purpose of protecting and giving primacy to the group rights of religious organizations to carry out religious activities. It also fails to give consideration to the need to resolve any apparent ambiguity in the legislation with an interpretation which respects *Charter* values. Finally, it fails to respect the balance intended by the legislation between the freedom of religion and association of religious groups and the individual rights protected by the *Human Rights Code*.

PART II - THE FACTS

i) Findings of the Tribunal regarding the religious basis for the Christian Horizons mission

5. The Appellant, Christian Horizons, is an Evangelical Christian religious organization which carries out a religiously based social service ministry to many developmentally challenged Ontario residents. The Christian Horizons ministry is, according to the evidence, considered by its employees to be a religiously motivated mission, whose activities are inspired by their Evangelical Christian beliefs and values. The beneficiaries of this social service activity were found by the Tribunal to comprise the group home residents and their family members, and this service is provided without discrimination based on religion or other grounds of distinction.

Heintz v. Christian Horizons (2008), 65 C.C.E.L. (3d) 218 (Ont. H.R. Trib.) (“Heintz”), at paras. 115, 122, 128 - 129, 133.

6. The Tribunal accepted that, from the perspective of the founders, members and staff of Christian Horizons, it was identified as an Evangelical Christian organization. The group members testified, and the Tribunal accepted, that they perceived that they are “called to minister to persons with developmental disabilities” by their religious beliefs. The charitable work is undertaken as a religious activity and “as a vehicle through which individuals who identify as Evangelical Christians can live out their faith”. The Vice-Chair described how this religious based mission activity furthers the religious purposes of the members of the organization. The Tribunal accepted that “the deeply held [religious] conviction of its members, and its central mission, is one of selfless service to the vulnerable, the marginalized and the needy”.

Heintz, supra, at paras. 133, 134, 153.

7. The Tribunal made findings that Christian Horizons worked to maintain its character as an Evangelical Christian organization in every aspect, and purpose and nature of the religious mission activity undertaken is fundamentally religious.

Heintz, supra, at para. 139.

8. The Tribunal also determined that, although the nature of the primary activity of Christian Horizons is fundamentally religious, the object of its particular ministry is to run group homes for those with developmental disabilities open to all Ontario residents without regard to their creed or faith background.

Heintz, supra, at paras. 140-142, 151-152.

ii) The number of Evangelical Christian Organizations affected by the Decision

9. The Tribunal's interpretation of the statutory exemption provided in s. 24(1)(a) will likely affect almost 6,000 Evangelical religious organizations in Ontario which employ approximately 17,500 full-time employees and a further 15,400 part-time employees.

Sonier, Faye and Rick Hiemstra, "Heintz v. Christian Horizons: Stripping the Biblical Mission from Evangelical Christian Ministries." *Church & Faith Trends* 2:2 (January 2009): 1 - 13 at 4.

10. The impact of the statutory interpretation at issue will not only affect these Evangelical Christian religious organizations based in Ontario and their members, but will have a broad impact on the hundreds of thousands of beneficiaries of the social service and charitable work provided by those associations not only in Ontario, but across Canada, and internationally.

Sonier, *supra*, at 5.

iii) The religious beliefs and values of Evangelical Christians that are impacted by the decision under appeal

11. Evangelical Christians constitute a movement within Protestant Christianity which promotes and encourages a personal relationship with Jesus Christ and recognizes the supremacy of Christ in all aspects of the life of the believer. It calls for the imperatives of love for God and one's "neighbour" as demonstrated in a religious faith that is both integrated, active and holistic. Evangelical Christians practise and manifest their faith not only through religious worship, prayer, and doctrinal teaching, but also through activities of social service, charitable work and other social activism which constitute a manifestation and exercise of their religious beliefs and values. For Evangelical Christians, social activism and social service are an outward expression of faith,

obedience and worship of God. Social service is considered as much a manifestation of religious faith, as is participation in religious worship or prayer.

Clemenger, Bruce J. "Evangelicalism and the Advancement of Religion." *Church & Faith Trends* 2:2 (January 2009): 1-7 at 4 - 6.

iv) Evangelical Christians exercise their freedom of religion by manifesting their Christian faith through Christian "mission" as expressed through social service activities

12. As a direct consequence of their religious faith and the doctrines of Evangelical Christianity, Evangelical Christians feel religiously mandated to engage in mission activities to reach out to care for the vulnerable and the needy in society. The concept of religious "mission" to Evangelical Christians involves religious activities, extended to all in the world, to both preach and teach Evangelical Christian doctrines but also, and equally as important, to serve and care for the poor, the needy and the vulnerable without distinction. For Evangelical Christians, religious belief and practise is manifested not only through activities involving worship, prayer and doctrinal teaching, but also manifested through good works such as missions to the poor, the needy, the homeless, the sick and the weak.

Stackhouse, Jr., John G. "Evangelicalism and Fundamentalism." *Church & Faith Trends* 2:2 (January 2009): 1 - 3.

13. For over two centuries, Evangelical Christian organizations have engaged in religious based charities, involving schools, missions to the homeless and poor, mission hospitals and health care provision and relief work in Canada and internationally. All of these mission activities constitute a manifestation of the Evangelical faith undertaken by these Evangelical Christians through their religious organization. The charitable mission work is infused by their Evangelical religious values, beliefs and shared practises. This activity has been described as follows:

"Because of this belief, Evangelicals have traditionally given of themselves and of their time to care for the vulnerable and needy. Indeed, people who regularly attend religious services are more generous in giving of their time and money than other Canadians.

Often Christians gather for cooperative witness by forming organizations and ministries motivated by their common faith, which allows them to serve others out of a shared understanding of the consequences of their

faith for life and society. It is a communal expression of their worship to God. *The religious integrity of these groups and their members' commitment to the groups' mission and vision are an essential part of their ability to communally fulfill their purpose of serving God by serving others. These ministries may be church-based or may be specialized in ministries such as poverty relief agencies, pregnancy crisis centres, and child fostering organizations, among others. Innumerable Christian hospitals, schools, shelters, crisis centres, and relief organizations have been founded by Evangelicals, as part of their calling as Christians.*" (emphasis added)

Clemenger, *supra*, at 5.

14. Evangelicals believe that it is important for them to "minister" to the whole person and not just to the spiritual aspect of an individual. Holistic ministry requires that Evangelical Christians reach out to serve not only the spiritual needs of the community at large, but also to provide service and good works as an expression of their faith and their belief in God's love for others in society. They rely upon the specific teachings of Jesus Christ.

Clemenger, *supra*, at 5 - 7.

v) The religious imperative for Evangelical Christians to provide social services and "good works" on a non-discriminatory basis to the entire community without distinction based on faith, race, ethnicity or other grounds of discrimination

15. Evangelical Christians, and in fact many other Christians, are mandated by their faith to provide charitable work and social activism for the benefit of all without discrimination. Their religious mandate is inclusive and compels them to provide charitable work and social services without discrimination to all members of society and, internationally, to all members of the international community. As such, Evangelical Christian missions have, for over two centuries in Ontario, provided charitable work for many thousands of beneficiaries throughout Ontario, Canada and internationally, without any distinction based on the faith of the beneficiaries or their race, creed, colour, place of ethnic origin or other ground of distinction. Evangelical Christians have established soup kitchens and centres to feed and shelter the homeless, schools for those in need, clinics and hospitals and relief programs which have been open to all both in Canada and throughout the world. Currently, Evangelical Christian organizations run domestic and international charitable aid and relief programs which provide food, shelter, community organizations, medical care, education and other developmental needs, both domestically and

internationally to hundreds of thousands. Many of these organizations raise hundreds of millions of dollars from donors in Ontario and throughout Canada which fund massive relief efforts for the benefit of many.

Transcript of HRTO hearing, testimony of Rev. Dr. Stiller, pgs.
1765 - 1766.

16. This non-discriminatory nature of the work is a direct result of the religious beliefs, values and teachings of Evangelical Christians based on the dictate of Christ to love your neighbour as yourself and the teachings that one's faith and obedience to God can be measured through one's activities of serving the needs of those in the community without distinction.

Clemenger, *supra*, at 5 - 7.

Sonier, *supra*, at 4.

Heimstra, Rick, "Evangelical Giving and Volunteering." *Church & Faith Trends* 2:2 (January 2009): 1 - 10, at 1 - 2, 10.

vi) The impact of the decision under appeal on the freedom of association of Evangelical Christians

17. Evangelical Christians who form or join religious organizations for the exercise of mission activities in the form of social service, do so as an expression of, and manifestation of, their religious faith. While it is open for Evangelical Christians to choose to join a secular organization which is engaged in a variety of social service work, many choose to associate with other Evangelical Christians. This choice is a manifestation of their freedom of association.
18. Evangelical Christian religious organizations base their activities on a shared faith. All of the activities of the organization are considered by all members to be infused with the values of religious service. The day often begins and ends with prayer engaged in by all members of the organization. The social service work is provided with a shared set of beliefs and values but also with shared expression about how that work constitutes an exercise of religious mission. To Evangelical Christians, such as the members of Christian Horizons, all of the work carried out by the organizations, through their association, thus constitutes a religious exercise.

19. The impact of the decision under appeal for thousands of Evangelical Christian organizations is profound. It effectively prohibits them from associating with other Christians to engage in religiously based charitable work unless they violate their own religious beliefs and discriminate by serving only members of their own faith group. This result is untenable. Case studies have indicated that:

- (a) a Christian international relief and aid agency would either have to give up its Christian identity (by hiring non-Christians) or engage in unthinkable discrimination by refusing assistance to non-Christians in the distribution of aid and relief in refugee camps in Africa and Asia, and would be compelled to cause or exacerbate religious strife in poverty stricken nations that rely heavily on its relief work;
- (b) an urban Evangelical Christian street mission in Toronto which provides food, shelter, clothing, skills training, counselling, daycare and other basic services to the poor, homeless and needy, and has done so for years on the basis of helping all in need without discrimination based on faith or other grounds, would be forced to either give up its Christian identity (which is considered essential to its success) by engaging non-Christians, or by turning away vulnerable and poverty stricken individuals on the basis of faith. Both choices are stark, and would fundamentally compromise the religious beliefs of those running the mission; and
- (c) an Evangelical Christian youth ministry that has supported and assisted thousands of youth for almost 100 years in Ontario by providing youth programs in the downtown core, in schools, community centres, high rise neighbourhoods, to youths from all races, creeds and backgrounds, including many troubled at risk youths, would face the same stark choice of giving up its Christian identity by hiring and accepting non-Christian volunteers who do not accept the faith basis for the ministry, or would have to discriminate by providing its programs to only Evangelical Christian youth. This would undermine a fundamental tenet of the

organization to reach out to and help all youth in the community, and especially those most in need of help.

Sonier, *supra*, at 9 - 13.

vii) The unequal impact of the Tribunal's decision

20. The impact of the Tribunal's narrow interpretation of s. 24(1)(a) will create a distinction between religious organizations in Ontario and impose a burden on some as a result of their religious beliefs and religiously motivated practises. Under this interpretation, the s. 24(1)(a) hiring exception will only be available to those religious organizations whose beliefs and practises direct them to engage in religious activities that "benefit their own" and that primarily care only for the needs of their own faith community. Those identifiable minority groups, like Evangelical Christians, whose religious principles and beliefs direct them to provide charity and social service without discrimination based on faith, are denied the benefit of the law. This creates a fundamental inequality in the law grounded in religious faith which imposes a distinct burden on an identifiable group.

PART III - ISSUES TO BE ARGUED

21. The EFC will argue the following issues on this appeal:
- (i) **First Issue** - s. 24(1)(a) is a rights conferring provision which protects the group rights of members of, *inter alia*, religious organizations and should be given a purposive interpretation;
 - (ii) **Second Issue** - Alternatively, s. 24(1)(a) has arguable ambiguity and must be given an interpretation which is consistent with *Charter* values and advances the *Charter* rights of members of religious organizations whose rights are intended to be protected.
 - (iii) **Third Issue** - The Tribunal's narrow interpretation of s. 24(1)(a) unnecessarily, but very severely, limits and restricts the *Charter* rights and freedoms of members of Evangelical Christian religious organizations and specifically restricts their:
 - (a) s. 2(a) *Charter* freedom of religion
 - (b) s. 2(d) freedom of association
 - (c) s. 15 equality rights;
 - (d) s. 2(b) freedom of expression; and
 - (e) is based on an interpretation inconsistent with s. 27 of the *Charter*.

- (iv) **Fourth Issue** - A broad interpretation of s. 24(1)(a) is consistent with both *Charter* values and is complimentary to and furthers the overall purposes of the *Ontario Human Rights Code*.

PART IV - ARGUMENT

i) First Issue - S. 24(1)(a) is a rights conferring section provision intended to broadly protect group rights

a) The purpose of s. 24(1)(a)

22. The Supreme Court of Canada has recognized in both *Caldwell* and *Brossard* that s. 24(1)(a) is a rights conferring provision, which is intended to advance and protect the “group rights” of members of, *inter alia*, religious organizations.

Caldwell v. Stuart et al., [1984] 2 S.C.R. 603 (S.C.C.) at 626 per McIntyre, J.

Brossard (Town) v. Quebec (Commission des droits de la personne), [1988] 2 S.C.R. 279 (S.C.C.) 100, 131 per Beetz, J.

23. In *Caldwell*, the Supreme Court of Canada prescribed that s. 22 of the British Columbia *Human Rights Code*, a provision similar to s. 24(1)(a), should be interpreted broadly to give effect to its purpose to protect both denominational religious activity and the right to freely associate within religious organizations. The Court identified that it is not a limiting provision but one intended to promote religion. Justice McIntyre wrote:

It seems evident to me that the Legislature of British Columbia, recognizing the historically acquired position of the denominational school and the desirability of preserving it, in enacting a Human Rights Code which goes far to eliminate differences and distinctions in society, included s. 22 as a protection for the denominational school or other institution in like case. It is therefore my opinion that the courts should not in construing s. 22 consider it merely as a limiting section deserving of a narrow construction. *This section, while indeed imposing a limitation on rights in cases where it applies, also confers and protects rights.* I agree with Seaton J.A. in the Court of Appeal where he expressed this thought in these words:

This is the only section in the Act that specifically preserves the right to associate. Without it the denominational schools that have always been accepted as a right of each denomination in a free society, would be eliminated. In a negative sense s. 22 is a limitation on the rights referred to in other parts of the Code. *But in another sense it is a protection of*

the right to associate. Other sections ban religious discrimination; this section permits the promotion of the religion....

...S. 22 is the only part of the Act that preserves the rights of those who would have separate schools. *No valid reason has been suggested why it should be construed narrowly. On the contrary, good reason has been offered why it should not.* (emphasis added)

Caldwell, supra, at para. 37 per McIntyre, J.

24. In *Brossard*, the Supreme Court gave a similar interpretation to the corresponding section of the Quebec *Charter of Human Rights and Freedoms*, on the basis that it was a rights conferring section that gave “primacy” to group rights over the rights of individuals and was intended to advance the free association of members of certain groups. Justice Beetz wrote:

The better view is that like s. 22 of the B.C. Code, the second branch of s. 20 has a dual purpose: when it applies, it at once confers rights upon some persons and imposes a limitation on the rights of others. That it limits an individual's right to be free from discrimination is plain.

It is also designed, however, to allow certain non-profit institutions to create distinctions, exclusions or preferences which would otherwise violate the *Charter* if those distinctions, exclusions or preferences are justified by the charitable, philanthropic, religious, political or educational nature of the institution in question. In this sense, s. 20 confers rights upon certain groups. *In my view, this branch of s. 20 was designed to promote the fundamental right of individuals to freely associate in groups for the purpose of expressing particular views or engaging in particular pursuits. Its effect is to establish the primacy of the rights of the group over the rights of the individual in specified circumstances.* Rather than adopting a liberal or a restrictive interpretation of the second branch, I shall therefore endeavour to give the expressions “nonprofit institution” and “political nature” their ordinary meaning, using the traditional rules of statutory interpretation. (emphasis added)

Brossard, supra, at para. 100, per Beetz, J.

25. Given the legislature’s intent to protect religious organizations, and in accordance with the “modern rule” of statutory interpretation, s. 24(1)(a) must be given an interpretation consistent with the purpose of conferring “group rights” on religious organizations and giving primacy to these rights, in certain prescribed circumstances, over the individual rights to be free from discrimination otherwise conferred in the *Human Rights Code*.

Where a group of religious adherents associate in an organization for the primary purpose of engaging in religious activity, that balance can be achieved by recognizing that individuals who wish to seek employment within a religious organization will have to subscribe to the religious beliefs and values of the members of the organization.

Sullivan, Ruth, Sullivan and Driedger on the Construction of Statutes, 4th ed. (Markham: Butterworths Canada Ltd., 2002) at 195, 198 - 199.

R. v. Sharpe, [2001] 1 S.C.R. 45 (S.C.C.) at para. 33 per McLachlin, C.J.

26. In order for the rights intended to be conferred by s. 24(1)(a) to have efficacy, they must be given a broad and purposive interpretation. The Court, in interpreting the section, must give consideration to the religious beliefs and values of the members of religious organizations who have chosen to associate for a religious purpose. If their organization's purpose is to carry out a religiously mandated charitable work, or other religious activity, the Court must consider the extent to which, from *their religious perspective*, this activity serves their religious interests. If the nature of the activity engaged in by the organization fulfills its religious mandate, the Court should recognize that the organization primarily serves the religious interests of its members.
 - b) **The interpretation of the second element of s. 24(1)(a) - "Primarily engaged in serving the interests of persons identified by their creed"**
27. Section 24(1)(a) is a rights conferring provision intended, when considering religious groups, to promote and encourage free association of religious believers for the purpose of undertaking religious activities together.
28. The language of the second element of s. 24(1)(a) requires an analysis of the nature of the primary activity "engaged in" and the assessment of whether it furthers the religious purposes of the organization and its members. The inquiry thus focuses on three questions. First, what is the nature of the activity engaged in? Is it fundamentally a religious activity? Second, does the organization "primarily" engage in that religious activity, as opposed to another activity that is not primarily a religious activity? And

third, does that activity engaged in serve “the interests” of the people of faith who comprise the organization and further their religious purposes?

29. What are “the interests” that must be served to satisfy the language? Given that the section is intended to protect and give primacy to the rights of religious groups to further religious purposes, the “interests” referred to must be considered, in that context, to be the faith groups’ religious interests, including their interest in engaging in religious activities.
30. Christian Horizons is primarily engaged in the activity of facilitating the “Christian ministry” of the members of the organization to fulfill their “Christian calling” to serve the developmentally challenged. This activity fulfills all the criteria of the second element of s. 24(1)(a). First, the nature of the activity is fundamentally religious for these individuals. Second, this religious mission constitutes activity that this organization is “primarily engaged in”. And third, it clearly serves the religious interests of the members in facilitating their religious mission.
31. It is therefore the religious nature of the charitable work (or other activity) undertaken by the religious organization that is largely determinative of the applicability of the exemption; not a quantification of, or the identity of, the recipients of the work of the charity. Put another way, the question is “Was the charitable activity religious in nature, and performed in fulfillment of the religious interests of the members?” and not “Who received the fruits, or benefits, of the religiously mandated work?”
32. The fact that the recipients of the religious charity benefit from the religious activity engaged in does not derogate from the fact that the elements of the definition are met. Nor does it matter whether the beneficiaries of the charitable work are 90 percent Christian in Toronto, 90 percent Muslim in Darfur or of no particular faith in East Congo. What is relevant, for the purposes of the Act and the applicability of the exemption, is that the nature of the activity undertaken is primarily religious and that it serves the religious purposes of the religious group which the section was intended to protect.

33. A narrow and formulaic interpretation, such as that adopted by the Tribunal, ignores the religious nature of the activity undertaken and the purposes it serves, and merely measures, quantitatively, the ultimate external recipients or beneficiaries. A religious organization should instead be understood to be “primarily engaged in serving the interests of its members” if on a substantive analysis, it is primarily engaged in activities which are inherently of a religious nature that constitute a manifestation of the religious beliefs and values of its members.
34. The fundamental error made by the Tribunal in interpreting the second element is two-fold. First, notwithstanding the finding that members of Christian Horizons undertook their charitable work as a religious ministry and saw it as a fundamentally religious activity, the Tribunal did not consider this religious nature and “purpose” of their activity in determining if the second element had been satisfied. Rather, the Tribunal focused solely on the object of the specific charitable work done in furtherance of that religious purpose. The Tribunal ignored the consequences of its findings that Christian Horizons is a group of Christians who are carrying out a religiously motivated mission.
35. Second, the Tribunal considered, from an objective and non-religious perspective, that there is a fundamental distinction between running a religious school (as in *Caldwell*) and engaging in the religious charitable work of running a group home. From the Tribunal’s perspective, the later activity did not have a sufficiently religious purpose because the group homes are not being run primarily for Evangelical Christians.
36. This conclusion ignores the specific findings that charitable work is undertaken by a group of Christians as a form of religious activity. In so doing, the Tribunal failed to apply the requirement of *Amselem/Jones/Ross (infra)* to accept the sincerely held religious perspective of religious believers. Rather, the Tribunal considered, from its non-religious perspective, that while running a religious school as in *Caldwell/Brossard* is to be considered a religious activity which fulfills a religious purpose, a Christian mission to run a religiously based group home, is to be considered as a purely secular activity that does not *serve* a religious purpose.

37. The Board's decision, therefore, fails to recognize the group rights intended to be protected. Its interpretation of s. 24(1)(a), far from protecting the rights of religious organizations as the legislature intended, marginalizes such organizations and makes it impossible for religious individuals to "freely associate in groups for the purpose of expressing particular views or engaging in particular pursuits", where such individuals wish to both preserve the religious integrity of their association and also carry out non-discriminatory charitable and social service work.

ii) **Second Issue - Alternatively, section 24(1)(a) has arguable ambiguity and must be given an interpretation which is consistent with *Charter* values and specifically the *Charter* values of members of religious organizations whose rights are to be protected.**

38. It is arguable that s. 24(1)(a) has an inherent ambiguity. Administrative tribunals have given the words "primarily engaged in serving the interests of" two different interpretations as they apply to one Evangelical Christian religious organization. In the *Parks* decision, the Human Rights Board accepted an interpretation that focused on the religious interests of the members of Christian Horizons that are served by the charitable work undertaken by the organization. It held that the exemption could be utilized even though there are beneficiaries of the charitable work who are not religious adherents. In contrast, the Tribunal decision under appeal ignored the religious interests of the members served by the activity of the organization, and focused solely on the identity of the beneficiaries of the religious activity, in determining the applicability of the section.

Parks v. Christian Horizons (No. 1) (1992), 16 C.H.R.R. D/40 at paras. 50 - 52.

Heintz v. Christian Horizons [2008] O.H.R.T.D. No. 22 (O.H.R.T.) at paras. 135 - 137.

39. Where legislation is capable of more than one interpretation, there is a fundamental principle of statutory interpretation that the legislation must be interpreted, if possible, in such a manner as consistent with, and which promotes, *Charter* values. It is presumed that legislation is enacted in compliance with the norms embodied in Canada's entrenched constitution, including the rights and freedoms protected by the *Charter*. Accordingly, where the legislation permits two different, yet equally plausible,

interpretations, each of which might be consistent with the apparent purpose of the statute, it is appropriate to prefer the interpretation that accords with *Charter* principles. As Lamer J. stated, “Although this Court must not add anything to legislation or delete anything from it in order to make it consistent with the *Charter*, there is no doubt in my mind that it should also not interpret legislation that is open to more than one interpretation so as to make it inconsistent with the *Charter* and hence of no force or effect”.

Slaight Communications Inc. v. Davidson, [1989] CarswellNat 193 (S.C.C.) at para. 90 per Lamer, J.

BellExpressVu Ltd. Partnership v. Rex, [2002] CarswellBC 851 (S.C.C.) at paras. 62-63 per Iacobucci, J.

R v. Sharpe, [2001] CarswellBC 82 (S.C.C.) at para. 33 per McLachlin, C.J.

40. The Tribunal chose to narrowly interpret s. 24(1)(a) without proper consideration of the *Charter* values affected. Specifically, the Tribunal failed to give proper consideration to the impact of the narrow interpretation it gave to s. 24(1)(a) had in significantly restricting the rights and freedoms of the members of religious organizations. As discussed, this section is designed to confer and protect the group rights of people of faith to freely associate exclusively with members of their faith for religious activities which manifest their beliefs and values. Importantly, s. 24(1)(a) did not place any limits on the nature of the religious interests that are served or the activity engaged in.
41. Furthermore, the narrow interpretation of s. 24(1)(a) made by the Tribunal did not follow the jurisprudential directive of viewing the *Charter* rights at issue from the perspective of the religious minority whose rights are deprived, as required by *Charter* jurisprudence.

Syndicat Northcrest v. Amselem, [2004] 2 S.C.R. 551 (S.C.C.) at paras. 43 - 46 per Iacobucci, J.

R. v. Jones, [1986] 2 S.C.R. 284 (S.C.C.) at para. 20 per La Forest, J.

42. Given its arguable ambiguity, s. 24(1)(a) must be interpreted in accordance with the *Charter*. Such an interpretation must recognize the group rights of religious individuals, as per *Caldwell* and *Brossard*, *supra*, and acknowledge that the interests of the group

members themselves are to be considered in determining whose interests are served by the group's activities.

iii) Third Issue - The narrow interpretation of s. 24(1)(a) severely limits and restricts the *Charter* rights and freedoms of many Evangelical Christians in religious organizations in Ontario and across Canada

a) Section 2(a) - Freedom of Religion

43. The Supreme Court of Canada recognized, in its seminal decision in *Big M Drug Mart*, that the freedom of religion protected by s. 2(a) of the *Charter* encompasses not only the right to hold and declare religious beliefs and values openly, but also the right to “manifest religious belief by both worship and practise”. It is primarily characterized by “the absence of coercion or constraint imposed by the state on a course of religious action” and specifically protects against direct and indirect coercion to act or refrain from acting and includes freedom from indirect forms of control which would constrain the right to manifest religious belief and practises. As Justice Iacobucci emphasized, in writing for the majority in *Amselem*, freedom of religion consists of the freedom to undertake “*practises* and harbour *beliefs*, having a nexus with religion”. He emphasized that it is “the religious or spiritual essence of an *action*” that attracts the protection of the *Charter*. Religiously motivated actions are protected.

Amselem, supra, at paras. 45 - 47 per Iacobucci, J.

R. v. Big M. Drug Mart Limited, [1985] 1 S.C.R. 295 (S.C.C.) at paras. 94 - 96 per Dickson, C.J.

44. This analysis begs the question of how to assess whether an action is in its essence “a religious practise having a sufficient nexus to religious faith”. The Supreme Court has repeatedly emphasized that the Court will not be the arbiter of religious beliefs and values, and will assess the religious beliefs, values and religious practises being exercised from the perspective of religious groups and individuals. The Court will only inquire as to the sincerity of the belief that the activity in question constituted a religious practise.

Amselem, supra, at paras. 43 - 45 per Iacobucci, J.

Jones, supra, at 295 per La Forest, J.

Ross v. New Brunswick Dist., [1996] 1 S.C.R. 825 (S.C.C.) at paras. 70 - 71 per La Forest, J.

45. It is therefore imperative that the Court on this appeal consider, from the perspective of Evangelical Christians, the impact of a narrow interpretation of s. 24(1)(a) on their right to manifest their religious beliefs and values through social service and charitable works carried out in association with other Evangelical Christians in religious organizations. There is clearly an associational element which is protected by the freedom of religion.

Buckingham, Janet Epp, "The Fundamentals of Religious Freedom: The Case for Recognizing Collective Aspects of Religion." (2007), 36 S.C.L.R. (2d) 251 at 271 - 280.

46. The decision of the Tribunal under appeal failed to recognize that the social activism and religiously mandated social service as carried out by Christian Horizons constitutes a form of constitutionally protected religious practise for those Evangelical Christians. This charitable work is both an exercise of, and a manifestation of, their faith and values, just as much as a service of prayer or religious worship constitutes a religious exercise or manifestation. Freedom of religion for Evangelical Christians in religious organizations, must include the freedom to engage in religious-based social service and charitable activities, in association with other Christians, without coercion or constraint from the state. Their "freedom of religion" encompasses both a freedom to manifest their religious beliefs through religiously motivated social service and social activism, and to do so free from state-imposed mandates or restrictions which constrain the manner in which they choose to carry out that religious practise.
47. Thus, the decision under appeal directly violates and restricts the freedom of religion of Evangelical Christians engaged in religious service through religious organizations. First, the Tribunal decision failed to recognize the fundamental religious nature of the social service and social activism work carried out by Evangelical religious organizations. Second, it failed to recognize that these religious organizations, by facilitating that religiously motivated work, are primarily serving the interests of the Evangelical Christians carrying out the religious activity. Third, the Tribunal decision had the direct

effect of restricting the manner in which that religious activity will be carried out and the scope of that religious activity that can be performed.

48. Evangelical Christians have a religious mandate to serve all of the poor and the needy without discrimination. Many wish to do so in association with other Christians as a form of religious mission. The Tribunal's decision constrains them in this religious-based activity. They face a "Catch-22". They are either compelled to compromise their religious values and discriminate in their charitable work to their own faith community, or they must give up the right to freely associate with fellow Christians for their religious charitable work.
49. Further, the decision ignores the perspective of Evangelical Christians who wish to carry out a religious exercise in exclusive association with others who share their faith and values. The State would not dictate those with whom religious individuals should pray or engage in a service of religious worship. Similarly, it should not dictate or impose the State's values on those with whom religious people engage in a religious exercise in the form of charitable work when such work is being conducted within a religious organization.
50. The Supreme Court has observed that freedom of religion is not absolute, and must often be reconciled with the rights and freedoms of others. However, as observed in *Dagenais*, there is no "hierarchical approach to rights" and when *Charter* rights are perceived to compete, a balance will be achieved. This balance is not achieved when freedom of religion is substantially curtailed or denied.

Dagenais v. Canadian Broadcasting Corp., [1994] 3 S.C.R. 835 at 877.
51. In the *Marriage Reference*, the Supreme Court discussed the need to resolve, within the Charter, a possible conflict between same-sex equality rights and s. 2(a) freedom of religion. The Chief Justice observed that there is no hierarchy between these rights and "that the right to religious freedom enshrined in s.2(a) is expansive....the protection of freedom of religion afforded by s. 2(a) of the Charter is broad and jealously guarded."

Ref re Same Sex Marriage, 2004 S.C.C. 79 at paras. 50 - 53 per McLachlin, C.J.

See I. T. Benson, "The Freedom of Conscience and Religion in Canada", Vol. 21 Emory International Law Review 111 at 146 - 151.

b) Section 2(d) - Freedom of Association

52. As discussed, the purpose underlying s. 24(1)(a) is to protect and give primacy to the rights of religious groups to freely associate for religious activities. Section 2(d) of the *Charter* provides that everyone enjoys the right to freedom of association. The scope of that freedom includes a broad range of activity. The purpose of s. 2(d) is to protect the collective action of individuals in pursuit of their common goals as well as, in some circumstances, the collectivities themselves. Freedom of association affords a significant protection for religious organizations in the practise of their faith in Canadian society.

The Supreme Court recognized this in stating:

Association has always been the means through which political, cultural and racial minorities, religious groups and workers have sought to attain their purposes and fulfil their aspirations; it has enabled those who would otherwise be vulnerable and ineffective to meet on more equal terms the power and strength of those with whom their interests interact and, perhaps, conflict.

Re Public Service Employee Relations Act (Alta.), [1987] 1 S.C.R. 313 (S.C.C.) at para 87 per Dickson, C.J.

53. The associational nature of freedom of religion as protected in s. 2(a) was recognized by the Supreme Court in *Edwards*.

R. v. Edwards Books and Art Limited, [1986] 2 S.C.R. 713 at 808 - 809 per Dickson, C.J. and per Wilson, J. at 781

See also Buckingham, *supra*.

54. As the Court has recognized, freedom of association protects the "associational aspect of the activity" as opposed to the nature of the activity itself.

Dunmore v. Ontario (Attorney General), [2001] 3 S.C.R. 1016 (S.C.C.) at paras. 17 - 18 per Bastarache, J.

55. The Tribunal's interpretation of s. 24(1)(a) essentially precludes Evangelical Christians from freely associating with other co-religionists for social activism unless they are prepared to discriminate in the provision of those services.

c) Section 15 - Equality Rights of Evangelical Christians

56. Under a s. 15 equality rights analysis, the Court must consider both the contextual and substantive factors resulting from the impugned legislation to determine if there is actual discrimination against an identifiable group. In such analysis, the Court considers first whether the impugned legislation draws a distinction between the claimant and others based on a personal characteristic, and second, whether the distinction is based on an enumerated or analogous ground. Third, the Court must consider whether the differential treatment discriminates in the substantive sense by imposing a burden or denying an advantage conferred on others under the law.

Law v. Canada (Minister of Employment and Immigration), [1999]
1 S.C.R. 497 (S.C.C.) at para. 88 per Iacobucci, J.

57. As with a s. 2(a) analysis, the Court's perspective in evaluating a breach of equality rights must be from the perspective of an identifiable group whose rights are being violated. In this case, the Court should consider the perspective of the Evangelical Christians who are an identifiable group as a religious minority (comprising 7 - 12% of Canadians) whose rights were intended to be protected by s. 24(1)(a), when considering the application of s. 15.

Heimstra, Rick, "Counting Canadian Evangelicals." *Church & Faith Trends* 1:1 (October 2007): 1 - 10 at 2.

58. Evangelical Christians (and others) are taught and mandated by their religious beliefs and values to serve the social needs of all those throughout their community, and indeed throughout the world, without limitation or discrimination. This mission to serve all is a religious imperative for Evangelical Christians, who are mandated by the teachings of their faith and of their scriptures, to engage in social activism as an expression and manifestation of their religious faith. Other religious groups, however, do not have similar religious teachings or religious mandate. Such groups may not teach or mandate that their adherents engage in social activism or charitable work, or their religious faith

may compel them only to “look after their own” and engage in charitable works solely within their religious communities.

59. The Tribunal’s interpretation of s. 24(1)(a) has created and imposed a distinction between religious organizations, and the religious individuals who comprise those organizations, based on the faith and values of those religious groups. Those religious organizations which, according to their faith, are engaged in religiously-based charitable work provided *solely or primarily* to members of their own faith community, can rely upon the exemption as narrowly interpreted. That is because their religious activity benefits those of their own faith. Whereas Evangelical Christians in faith-based organizations such as Christian Horizons, who are mandated by their faith to “serve all” and thus provide benefits to the active community at large, are not able to rely upon the exemption as narrowly interpreted. Under the Tribunal’s narrow interpretation, s. 24(1)(a) draws a distinction between an identifiable group of religious persons, based on their religious beliefs. Here, the benefit of the exemption is denied to the identifiable minority group of Evangelical Christians who have a broader religious mandate to serve all without discrimination and thus, the section as so interpreted, substantively discriminates.

60. A broader interpretation of s. 24(1)(a), which focuses on the religious nature of the charitable activity being carried out by the organization as being determinative of the applicability of the exemption, would be equally applicable to all religious organizations, regardless of the scope of their charitable work as mandated by their religious beliefs and values. Under such a broad interpretation, all religious groups will be treated equally if they are “primarily” carrying out religiously mandated work which serves the religious interests of the members of their religious community who are engaged in the charitable work. Such an interpretation would achieve the goal of equality and protect the equality rights of Evangelical Christians and those of other religious minorities.

d) Section 2(b) - Freedom of Expression

61. Section 2(b) of the *Charter* provides that everyone has the freedom of thought, belief, opinion and expression, including freedom of the press and other media of

communication. Section 2(b) encompasses a broad range of speech with virtually no content based restriction. For example, in *Montréal (City) v. 2952-1366 Québec Inc.* the Supreme Court considered whether noise emitted by a loudspeaker broadcasting from inside a club that featured female dancers had expressive content. The court held that the answer must be yes. It wrote:

The loudspeaker sent a message into the street about the show going on inside the club. The fact that the message may not, in the view of some, have been particularly valuable, or may even have been offensive, does not deprive it of s. 2(b) protection. Expressive activity is not excluded from the scope of the guarantee because of its particular message. Subject to objections on the ground of method or location,...all expressive activity is presumptively protected by s. 2(b).

Montréal (City) v. 2952-1366 Québec Inc., [2005] S.C.J. No. 63 (S.C.C.) at para. 58 per McLachlin C.J. and Deschamps, J.

62. The Tribunal's decision impacts the content of what members of a religious association can communicate to each other within their association regarding matters of faith and religious interpretation. The Tribunal held that Evangelical Christians' core beliefs as they relate to same sex behaviour by staff and the communication of these beliefs created a "poisoned" work environment. However, the work environment exists within the religious organization and the communication and expression of the core beliefs occurs therein. Do the courts have the mandate and ability to be the arbiters of religious and theological based dialogue within religious organizations? This runs afoul of the principle of deference to subjective and sincerely held beliefs of those claiming religious rights. Rather, the court should prefer an interpretation of s. 24(1)(a) that does not limit religious dialogue and expression within such organizations on the basis of imposing secular values and limitations.

Heintz v. Christian Horizons, [2008] CarswellOnt 2633 (O.H.R.C.) at paras 234-236.

e) **Section 27 - Multicultural Heritage**

63. Section 27 of the *Charter* provides:

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

64. Religion is one of the dominant aspects of a culture which, in view of this section, the *Charter* is intended to preserve and enhance. Therefore, the Charter values and issues in the statutory interpretation of s. 24(1)(a) must be interpreted and applied in light of Canada's multicultural heritage. Section 27 provides that the Canadian society is an open and pluralistic one which must accommodate the small inconveniences that might occur where different religious practises are recognized as permissible exceptions to otherwise justifiable homogeneous requirements.

[A] law infringes freedom of religion if it makes it more difficult and more costly to practise one's religion, [this] is supported by the fact that such a law does not help to preserve and certainly does not serve to enhance or promote that part of one's culture which is religiously based.

R. v. Videoflicks Ltd. et al., (1984), 48 O.R. (2d) 395 (Ont. C.A.) at para. 56 per Tarnopolsky, J.A.

65. The Tribunal's interpretation of s. 24(1)(a) essentially penalizes religious organizations which do good works beyond their own faith community and more fully engage with Canada's multicultural society. According to the Tribunal's ruling, in order to be conferred the right under s. 24(1)(a), a religious organization must insulate itself from the diversity of pluralistic Canadian society and minister or serve exclusively amongst its own adherents. Thus, religious organizations are deprived from their ability to participate in and foster the enhancement of the multicultural heritage of Canadians by providing social services without regard to religious, racial or cultural background of the recipients. Further, the Tribunal's interpretation makes it more difficult for a religious organization like Evangelical Christians, whose service to the larger community is an expression of their faith, to practise their religion.
66. The Court should interpret and apply s. 24(1)(a) in a manner which both protects and advances the rights of minority religious groups, such as Evangelical Christians, from fully engaging with the broader multicultural and pluralistic society. And it should apply an interpretation which allows religious organizations to carry out religious activities with reliance on s. 24(1)(a), in order to assist the needy, vulnerable and poor without discrimination.

iv) Fourth Issue - A broad interpretation of s. 24(1)(a) is consistent with both *Charter* values and is complimentary to and furthers the overall purposes of the *Human Rights Code*.

67. A broad interpretation of s. 24(1)(a) which accommodates the *Charter* rights of religious organizations is required in order to advance the purpose of s. 24(1)(a). An interpretation which focuses on the fundamental nature of the primary activity of the organization will advance such purpose. If an organization's activities are primarily religious practises or actions, as viewed and understood from the perspective of the religious group undertaking those activities, then the Court should consider that the organization's activities primarily serve the religious interests of its members. This protection of the religious purpose of the organization fulfills the underlying purpose of s. 24(1)(a) and protects the *Charter* rights of its members.
68. This interpretation, which focuses on the nature of the religious activity undertaken by a religious organization, and the extent to which that activity promotes the religious interests of the members, will apply equally to all religious groups, regardless of their faith differences. It will also prevent arbitrary distinctions in the applicability of the exemption based on a "head count" approach to the identity of the recipients or beneficiaries of the organization's religious activity.
69. In *Trinity Western University*, Justice Iacobucci recognized that "[t]he diversity of Canadian society is partly reflected in the multiple religious organizations that mark the societal landscape and this diversity of views should be respected". He emphasized in that decision that an appropriate balance was achieved between competing rights by permitting religious organizations to exclude from membership those who did not accept and adhere to their Doctrinal and Lifestyle statements. This balance was achieved because individuals, like Ms. Heinz, could achieve their personal objectives without discrimination through other non-religious institutions or organizations in society.

Trinity Western University v. British Columbia College of Teachers,
[2001] 1 S.C.R. 772 (S.C.C.) at para. 33 per Iacobucci and
Bastarache, JJ.

Ref Re Same Sex Marriage, *supra*, at paras. 50 - 53 per McLachlin,
C.J.

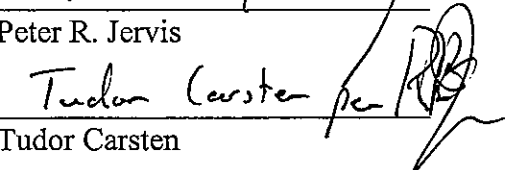
70. This contextual inquiry considers the relative impact of the interpretation on the group rights of members of religious organizations, as compared to the impact on rights of the individual seeking employment. As indicated in *Trinity Western University*, the Court will consider all relevant contextual factors in interpreting the section, and in assessing whether the appropriate balancing of rights is achieved, including:

- (a) the existence of the group rights exemptions in s. 24(1)(a) and its purpose of giving primacy to those group rights;
- (b) the fact that these religious organizations have historically carried out faith based charitable works which have and continue to benefit hundreds of thousands;
- (c) the very serious consequences for religious organizations and the serious limitations of their *Charter* rights by that interpretation;
- (d) the fact that the narrow interpretation will in fact require more discrimination in society by mandating religious organizations to discriminate on the basis of faith in the provision of charitable work in order to utilize the exemption;
- (e) the fact that individuals who wish to seek employment in association with the religious organization do so of their own free choice and have the option of choosing to accept the Doctrinal and Lifestyle policy or seek employment with a different religious or secular organization.

71. As Justice Iacobucci has written "For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society".

ALL OF WHICH IS RESPECTFULLY SUBMITTED


 Peter R. Jervis


 Tudor Carsten

of Counsel for the Intervenor,
 The Evangelical Fellowship of Canada

SCHEDULE “A”
LIST OF AUTHORITIES

1. *Heintz v. Christian Horizons* (2008), 65 C.C.E.L. (3d) 218 (Ont. H.R. Trib.)
2. Sonier, Faye and Rick Hiemstra, “Heintz v. Christian Horizons: Stripping the Biblical Mission from Evangelical Christian Ministries.” *Church & Faith Trends* 2:2 (January 2009): 1 - 13
3. Clemenger, Bruce J. “Evangelicalism and the Advancement of Religion.” *Church & Faith Trends* 2:2 (January 2009): 1-7
4. Stackhouse, Jr., John G. “Evangelicalism and Fundamentalism.” *Church & Faith Trends* 2:2 (January 2009): 1 - 3
5. Heimstra, Rick, “Evangelical Giving and Volunteering.” *Church & Faith Trends* 2:2 (January 2009): 1 - 10
6. *Caldwell v. Stuart et al.*, [1984] 2 S.C.R. 603 (S.C.C.)
7. *Brossard (Town) v. Quebec (Commission des droits de la personne)*, [1988] 2 S.C.R. 279 (S.C.C.)
8. Sullivan, Ruth, Sullivan and Driedger on the Construction of Statutes, 4th ed. (Markham: Butterworths Canada Ltd., 2002) at 195, 198 - 199
9. *R. v. Sharpe*, (2001) 1 S.C.R. 45 (S.C.C.)
10. *Parks v. Christian Horizons (No. 1)* (1992), 16 C.H.R.R. D/40
11. *Heintz v. Christian Horizons* [2008] O.H.R.T.D. No. 22 (O.H.R.T.)
12. *Slaight Communications Inc. v. Davidson*, [1989] CarswellNat 193 (S.C.C.)
13. *BellExpressVu Ltd. Partnership v. Rex*, [2002] CarswellBC 851 (S.C.C.)
14. *R v. Sharpe*, [2001] CarswellBC 82 (S.C.C.)
15. *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551 (S.C.C.)
16. *R. v. Jones*, [1986] 2 S.C.R. 284 (S.C.C.)
17. *R. v. Big M. Drug Mart Limited*, [1985] 1 S.C.R. 295 (S.C.C.)
18. *Ross v. New Brunswick Dist.*, [1996] 1 S.C.R. 825 (S.C.C.)
19. Buckingham, Janet Epp, “The Fundamentals of Religious Freedom: The Case for Recognizing Collective Aspects of Religion.” (2007), 36 S.C.L.R. (2d) 251
20. *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835

21. Ref re: Same Sex Marriage, 2004 S.C.C. 79.
22. I. T. Benson, "The Freedom of Conscience and Religion in Canada", Vol. 21 Emory International Law Review 111 at 146 - 151
23. *Re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313 (S.C.C.)
24. *R. v. Edwards Books and Art Limited*, [1986] 2 S.C.R. 713
25. *Dunmore v. Ontario (Attorney General)*, [2001] 3 S.C.R. 1016 (S.C.C.)
26. *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497 (S.C.C.)
27. Heimstra, Rick, "Counting Canadian Evangelicals." Church & Faith Trends 1:1 (October 2007): 1 - 10
28. *Montréal (City) v. 2952-1366 Québec Inc.*, [2005] S.C.J. No. 63 (S.C.C.)
29. *Heintz v. Christian Horizons*, [2008] CarswellOnt 2633 (O.H.R.C.)
30. *R. v. Videoflicks Ltd. et al.*, (1984), 48 O.R. (2d) 395 (Ont. C.A.)
31. *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772 (S.C.C.)

SCHEDULE "B"
RELEVANT STATUTES

Human Rights Code R.S.O. 1990, c. H.19

Special employment

s. 24(1) The right under section 5 to equal treatment with respect to employment is not infringed where,

- (a) a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by their race, ancestry, place of origin, colour, ethnic origin, creed, sex, age, marital status or disability employs only, or gives preference in employment to, persons similarly identified if the qualification is a reasonable and *bona fide* qualification because of the nature of the employment;
- (b) the discrimination in employment is for reasons of age, sex, record of offences or marital status if the age, sex, record of offences or marital status of the applicant is a reasonable and *bona fide* qualification because of the nature of the employment;
- (c) an individual person refuses to employ another for reasons of any prohibited ground of discrimination in section 5, where the primary duty of the employment is attending to the medical or personal needs of the person or of an ill child or an aged, infirm or ill spouse or other relative of the person;
- (d) an employer grants or withholds employment or advancement in employment to a person who is the spouse, child or parent of the employer or an employee;
- (e) a judge or master is required to retire or cease to continue in office on reaching a specified age under the *Courts of Justice Act*;
- (f) a case management master is required to retire on reaching a specified age under the *Courts of Justice Act*;
- (g) the term of reappointment of a case management master expires on the case management master reaching a specified age under the *Courts of Justice Act*; or
- (h) a justice of the peace is required to retire on reaching a specified age under the *Justices of the Peace Act*. R.S.O. 1990, c. H.19, s. 24 (1); 1999, c. 6, s. 28 (11); 2001, c. 32, s. 27 (5); 2005, c. 5, s. 32 (14); 2005, c. 29, s. 1 (2).

Canadian Charter of Rights and Freedoms

Fundamental Freedoms

s. 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.

Equality Rights

s. 15(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Multicultural Heritage

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE INTERVENOR
THE EVANGELICAL FELLOWSHIP OF CANADA**

DAVIS LLP

Barristers & Solicitors
1 First Canadian Place, Suite 5600
100 King Street West
Toronto, ON M5X 1E2

**Peter R. Jervis (LSUC #22774A)
Tudor Carsten (LSUC #47766V)**

Tel: 416.365.3506/416.365.3505
Fax: 416.369.5203/416.777.7409

Lawyers for the Intervenor,
the Evangelical Fellowship of Canada