

*Proceedings*_____

**“Opening Doors in
Public Education:
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Human Rights Work in Alberta Schools: The Legal and Moral Imperatives Challenges Facing Today's Educators

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When I reflect upon the many teachers and role models who had a positive impact on my life, I think of four outstanding people. First, the teacher who, in Grade 1, sent me a postcard from an exotic place called Trinidad. I kept that postcard with me for many years and always admired the mysterious beauty of the landscape it portrayed.

A second person who had a strong impact on my education was a woman who taught a work-related course. She is now a justice of the Court of Queen's Bench of Alberta; I am certain that it is only a matter of time before she is appointed to the Court of Appeal or the position of chief justice. I will always remember the passion that she communicated about wills and estates. She brought that subject to life! She does not know it, but she is my most significant role model.

Third, in law school, the professor who spoke with great enthusiasm and analytical ability about a subject that others might find dull: contract law. She is now Canada's minister of justice; I watch her career with interest and admiration.

What made each of these teachers stand out? Three things come to mind. First, they were passionate about their subject matter. Second, they made the content relevant and personal. Third, each teacher reinforced the fact that learning is a life-long process. They taught me that through learning, I could make a difference. If we go back to the example of my Grade 1 teacher's postcard, it was more than a picture of a beautiful place. It was symbolic. It said to me: "*there is an exciting, meaningful world out there—you can, and should, always seek it!*"

Gail H Forsythe is a lawyer/mediator whose law practice includes human rights issues, corporate conflict preventions system design and ombudsman services. In her previous position as the first discrimination ombudsman of a law society, she focused on promoting cultural diversity within the legal profession. She has consulted extensively across Canada with various clients to develop and deliver equity training programs and encourage equity practices in the workplace, and to raise awareness of equity issues among organizations and professions. From 1989 to 1991, she was assistant dean of law of the University of Calgary. She is the executive director of the Cultural Diversity Institute, University of Calgary.

As an educator first, and lawyer/mediator second, I try to use these principles in my work. By considering issues from the participant's perspective, I try to deliver a message that is relevant to that person's experience. By doing so, I observe that the "lightbulbs of understanding" go on more readily. You have probably observed the same result with your students and colleagues. I have also learned that this principle applies equally well in the courtroom. Judges sit up and listen attentively when legal arguments are framed to reach across barriers and dispel stereotypes.

I cannot help but wonder why these teachers were so important to me. Why were the lessons they taught so easy to absorb? and so long lasting? Were these people simply great teachers? Or, were they more meaningful to me because they mirrored the very essence of my sense of self: my gender and my ethnicity? How important was it to my career development that I could see my future through them?

Because of these teachers, I had living proof that, as a woman, "it could be done." This was important to me because my family was not privileged with respect to access to education. My father was a coal miner at Rabbit Hill, Alberta, and my mother was, and is, a homemaker. Their parents were immigrants who struggled as farmers in western Canada.

Would the impact of these teachers have been as inspirational if I was an aboriginal woman, a young woman of color, a person with a disability, of a non-Christian faith, or nonheterosexual? To whom do these students turn when they need inspiration and role models? Do mainstream teachers validate each student's unique sense of self that is integral to the student's culture, race, religion, disability or sexual orientation? Or, does the education system marginalize these students by silently implying that one must be mainstream to succeed in life?

Is the education system preparing teachers and students to value our diversity? It is increasingly imperative that Alberta educators foster a climate of human dignity in the classroom. I believe that by doing so, educators can make a life-long difference to students in these challenging times. We can "turn on the lightbulb of learning" by embracing our diversity.

Teachers, administrators and school board trustees face numerous challenges in today's classroom. Putting aside the obvious issue of funding, a key issue is how to remove systemic barriers to create healthy learning and work environments. The courts are full of cases that illustrate the personal and professional costs associated with this issue.

Cases of this nature affect educators, administrators and students on a daily basis. They illustrate that educators must be proactive to meet their legal and professional obligations as they relate to human rights in the classroom and diversity.

As these cases unfold, the courts strive to apply legal principles to ensure that case outcomes are consistent and fair.

The Right Honourable Chief Justice of Canada, Beverley McLachlin (2001) stated,

Through thousands of decisions, the Supreme Court of Canada has woven the tissue of Canadian justice. If one searches one can find missed stitches. But usually one finds that they have been taken up and reworked to make a fabric that is strong, serviceable and satisfying to our sense of how things should be in this, our part of the world.

I now turn to a very recent Supreme Court of Canada decision. I will leave it to you to decide if this case, which is now part of the “fabric of Canadian justice” woven by the Supreme Court of Canada, defines “how things should be” in the educator’s world. Does the reasoning in this case create a sufficiently strong fabric to address diversity issues in the classroom?

To illustrate, I would like you to think of one of your attributes that makes you unique and special. For example, it may be your gender, your cultural perspective, your religion or your sexual orientation. I imagine that special sense of self is unique to each of us. It is undoubtedly fortunate that we differ in this significant way—or it would be a very dull world, a world in which ideas are all the same and we stagnate due to a lack of different perspectives.

Now, imagine yourself as a small child. How strong is this aspect of your sense of self identity? How easy would it be for you, as a small child, to lose that sense of self? How important is it to you, as a small child, to have role models who exhibit your specific sense of self? If you do not have role models, will you gain by interacting with teachers who send the signal that it is all right to value and develop this unique aspect of your sense of being?

Let us take this example one step further. You have the option of taking your small child and placing that child in one of two classrooms. The teachers assigned to both classrooms believe that the foundation for your sense of self is morally wrong. They believe in this view so strongly that they signed a contract that required them to promise to never embrace this sense of self as part of their personal value system. The contract was a condition of entry to the university where they obtained their teaching degrees. The university also believes that your sense of self is contrary to its philosophy.

You must now place your child in one of these teachers’ classroom. There is one final factor to consider. Teacher A attended all five years of teacher training at the university that required the contract that denounced the attribute that is key to your sense of self. Teacher B attended four years of teacher training at that same university but one year at a public university. The public university welcomes diverse people, including people like you.

My question is: in whose classroom do you place your child? Both teachers have the potential to set aside their personal views of your identity to welcome you, make you feel included and respect your unique strength. With a show of hands, how many of you opt for Teacher A? How many opt for Teacher B? Did Teacher B seem preferable because you feared that because of the contract opposing your lifestyle that Teacher A would be less tolerant, even discriminatory?

This concern is what prompted a case between the British Columbia College of Teachers (BCCT) and Trinity Western University (TWU) that found its way to the Supreme Court of Canada.¹ The case centred around an administrative law issue regarding the college’s jurisdiction. It came forward because the British Columbia College of Teachers refused Trinity Western University’s application to assume full control over its five-year teacher training baccalaureate program.

Trinity Western University is a private educational institution in British Columbia. It is associated with the Evangelical Free Church of Canada. TWU requires its students to sign a community standards “contract.” This contract was

required of all students, faculty and staff; it prescribes the expected conduct of members while attending TWU. The signator must promise to uphold and promote the Christian lifestyle while refraining from a list of "practices that are Biblically condemned," which include "sexual sins including . . . homosexual behaviour."

Trinity Western University wanted to end the requirement that it was necessary for its students to attend one year at a public university where diversity was mainstream. This change was considered necessary by the university so that it could more fully address its religious mandate. The BCCT refused to approve the application because it was concerned that it was contrary to the public interest for it to approve a teacher education program that adopted the discriminatory practice of excluding or marginalizing homosexuals.

The university challenged the college's decision in three courts. It argued, successfully, that, without evidence that TWU teachers discriminated against their students, the college had gone beyond its power to assume that the educational program would produce teachers who were detrimental to society's interest in valuing and respecting diversity.

In an 8-1 majority decision, the Supreme Court justices agreed that under the *Teaching Profession Act of British Columbia* it was not within the college's jurisdiction to consider whether the program follows discriminatory practices. The court concluded that it was wrong for the college to interpret the TWU "contract" from a human rights perspective. By doing so, it went beyond its mandate to address educational matters; it concerned itself with human rights instead. The court stated that the college's expertise does not qualify it to interpret the scope of human rights nor to reconcile the competing rights of religion and sexual orientation.

The majority of the Supreme Court of Canada indicated that "at the heart of this appeal is how to reconcile the religious freedoms of individuals wishing to attend TWU with the equality concerns of students in British Columbia's public school system, concerns that may be shared by society generally." It noted that TWU is a private institution that is exempt, in part, from the British Columbia human rights legislation. Nor does the Canadian Charter of Rights and Freedoms apply.

The majority wrote that neither freedom of religion nor the guarantee against discrimination based on sexual orientation is absolute. The proper place to draw the line is generally between belief and conduct. The Supreme Court expressed the view that the freedom to hold beliefs is broader than the freedom to act on them.

It concluded that, in the absence of concrete evidence that training teachers at TWU fosters discrimination against homosexuals in the public schools of British Columbia, the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. Therefore, the program proposed by TWU was not discriminatory and should be approved by the college.

The court cautioned that acting on those beliefs, however, is a different matter. If a teacher in the public school system engages in discriminatory conduct, that teacher can be subject to disciplinary proceedings before the college. The court expressed the view that, in this way, the scope of the freedom of religion and equality rights that have come into conflict can be reconciled.

The Supreme Court of Canada Decision— The Lone Dissent

The only dissenting justice, The Honourable Madam Justice L'Heureux-Dube, viewed this case from a different perspective. She stated that the presence of discrimination is a relevant factor and within the college's jurisdiction and expertise. She noted that

Equality is a central component of the public interest that the BCCT is charged with protecting in the classrooms of the province. The BCCT was required to consider the value of equality in its assessment of the impact TWU's program will have on the classroom environment.

Her view was that, by signing the contract, the student or employee becomes complicit in an overt, but not illegal, act of discrimination against homosexuals and bisexuals. In that circumstance, she stated that it is not patently unreasonable for the BCCT to treat TWU students' public expressions of discrimination as potentially affecting the public school communities in which they wish to teach. Her view is that, although tolerance is a fundamental value stated in the TWU community standards document, the public interest in the public school system requires something "more than mere tolerance."

She opined that the college could reasonably conclude that, without a fifth year of training outside the supervision of TWU, there would be an unacceptable pedagogical cost. That cost would be expressed in terms of reduced exposure of TWU students to diversity and its values. She stated that it is reasonable to insist that graduates of accredited teacher training programs be equipped to provide a welcoming classroom environment, one that is as sensitive as possible to the needs of a diverse student body. Madam Justice L'Heureux-Dube stated,

The modern role of the teacher has developed into a multi-faceted one, including counselling as well as educative functions. Evidence shows that there is an acute need for improvement in the experiences of homosexual and bisexual students in Canadian classrooms. Without the existence of supportive classroom environments, homosexual and bisexual students will be forced to remain invisible and reluctant to approach their teachers. They will be victims of identity erasure.

She stated that the courts, by trespassing into the field of pedagogy, dealt a setback to the college's efforts to ensure the sensitivity and empathy of its members to all students' backgrounds and characteristics.

Conclusion

The Trinity Western University case is likely to be the subject of controversy. One journalist noted that the decision was "so much at odds with earlier rulings of the court" that "something has changed. . . ." (Byfield 2001). Is this case a departure from a trend toward tolerance within Canadian society? Or, is it an attempt to ensure that professional bodies have a clear understanding of their responsibilities and areas of expertise?

On the one hand, it could be argued that the Supreme Court did an excellent job of recognizing that people are capable of *not* acting on their beliefs in the

classroom in a discriminatory manner; therefore, educational programs like those at TWU are entitled to freedom of religious protection. On the other hand, the dissenting voice of Madam Justice L'Heureux-Dube casts a strong signal of doubt on society's ability to separate belief from action. She cites the case of *Egan v. Canada*, [1995] 2 S.C.R. 513 at para. 174, where Justice Cory states,

Canada has one of the highest youth suicide rates in the world. . . . Of all teens who commit suicide, about one third appear to be homosexual in orientation. Many such youth become depressed in the ongoing struggle with social fear and rejection. . . . Cognitive, emotional and social isolation, ongoing external and internalized homophobia and lack of support may lead homosexually oriented adolescents to perceive suicide as their only means of escape. . . .

Madam Justice points out that it is the human dignity of students that is truly at stake. I cannot help but wonder, if the facts of this case were reframed in the context of race, gender or a non-Christian religion, would the outcome have been the same?

The majority decision implies that people will treat others with dignity regardless of their personal views. Madam Justice L'Heureux-Dube's dissent implies that putting a child's sense of self and identity at risk is simply too high a price, particularly for those groups who have generally experienced "pre-existing disadvantage, vulnerability, stereotyping, or prejudice."

By the way, for those of you who keep track of details and who noted that I referred to four role models in my introduction but only spoke about three people, did I mention a woman who, as a single parent, fought hard to attain her legal education and rise to the Supreme Court of Canada? Her name is Madam Justice L'Heureux-Dube.

Note

1. *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31, File No.: 27168. Heard: 2000 November 9; Judgment: 2001 May 17. On appeal from the Court of Appeal for British Columbia.

References

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