



Court of Appeal File No. CA47688

**COURT OF APPEAL**

ON APPEAL FROM the order of the Honourable Madam Justice Morellato of the Supreme Court of British Columbia pronounced on 19 day of July, 2021

BETWEEN:

The Redeemed Christian Church of God

RESPONDENT  
(Petitioner)

AND:

City of New Westminster

APPELLANT  
(Respondent)

AND:

ATTORNEY GENERAL OF BRITISH COLUMBIA  
Pursuant to the *Constitutional Question Act*

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**APPELLANT'S FACTUM**

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**Counsel for the Appellant**

**Alison M. Latimer**  
**Barrister & Solicitor**  
1200-1111 Melville Street  
Vancouver BC V6E 3V6  
Tel: [REDACTED]  
Email: [REDACTED]

**Counsel for the Respondent**

**Marty Moore and Charlene Le Beau**  
**Justice Centre for Constitutional**  
**Freedoms**  
**c/o Carey Linde Personal Law**  
**Corporation**  
605-1080 Howe Street  
Vancouver BC V6Z 2T1  
Tel: [REDACTED]  
Email: [REDACTED]

**Counsel for the Attorney General of**  
**British Columbia**

**Jonathan Penner and Robert Danay**  
**Ministry of Attorney General**  
**Legal Services Branch**  
PO Box 9280 STN Prov Govt  
1001 Douglas Street  
Victoria BC V8W 9J7  
Email: [REDACTED]

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## CHRONOLOGY OF THE RELEVANT DATES IN THE LITIGATION

May 28, 2018	Parties enter into a contract for the respondent, The Redeemed Christian Church of God (" <b>Grace Chapel</b> "), to rent space at the appellant, City of New West Minster's (" <b>City</b> "), Anvil Centre in July 2018.
June 21, 2018	City cancels the booking.
December 28, 2018	Grace Chapel files the within petition.
February 9, 2019	City files the within response to petition.
December 2-3, 2020	Petition is heard by Justice Morellato who seeks further written submissions.
January 7, 28 and February 4, 2021	Parties deliver further written submissions.
July 19, 2021	Justice Morellato issues reasons for judgment on the petition (indexed as 2021 BCSC 1401) in which she: <ol style="list-style-type: none"> <li>1. Declares that the City's termination of the contract to rent a ballroom in the Anvil Centre to Grace Chapel on July 21, 2018 (the "<b>Cancellation</b>") unjustifiably infringed Grace Chapel's right to freedom of expression under s. 2(b) of the <i>Charter</i>.</li> <li>2. Declares that Grace Chapel has standing to seek a declaration that the Cancellation unjustifiably breached its s. 2(a) <i>Charter</i> right (the "s. 2(a) claim").</li> <li>3. Dismisses Grace Chapel's request for relief under the <i>Judicial Review Procedure Act</i>, R.S.B.C. 1996, c. 241.</li> <li>4. Grants Grace Chapel liberty to convert the s. 2(a) <i>Charter</i> claim into an action pursuant to Rule 22-1(7)(d).</li> <li>5. Dismisses Grace Chapel's claim that the City unjustifiably breached its duty of state neutrality concerning religious matters.</li> <li>6. Dismisses Grace Chapel's claim that the City unjustifiably breached Grace Chapel's s. 2(d) right to freedom of association.</li> </ol>
August 13, 2021	City files the within notice of appeal.

## OPENING STATEMENT

1. This appeal arises from the appellant (“**City**”)’s cancellation of an agreement that it entered into with the respondent (“**Grace Chapel**”). The agreement was for the single day rental of a ballroom at the Anvil Centre. The City cancelled the agreement because it came to understand that one of the event presenters was a vocal activist who habitually expressed low value anti-lesbian, gay, bisexual, transgender and queer (anti-“**LGBTQ**”) views and such expression was inconsistent with the agreement and policy.
2. Grace Chapel commenced the within proceedings incorrectly. As Morellato J. rightly held, the dispute was improperly framed as a judicial review. This resulted in concomitant limitations on the procedural rights of the parties and the evidentiary record. Despite these limitations, Morellato J. held that s. 24 of the *Charter* authorized an application to court where *Charter* relief was sought and it was open for her to adjudicate the *Charter* claims. This was an error of law sufficient to resolve the entire appeal.
3. However, Morellato J.’s error was compounded when she determined to essentially bifurcate the *Charter* issues. She adjudicated the s. 2(b) claim summarily, without affording the City an opportunity to lead additional evidence in support of a justification analysis. In contrast, she erroneously found the s. 2(a) claim raised a triable issue affording Grace Chapel an opportunity to bolster its record at trial. This error results in substantial unfairness and also an undesirable multiplicity of proceedings with a high risk of incompatible findings at the justification stage of analysis.
4. Morellato J.’s *Charter* analyses were novel and mired in legal and factual error. She applied a novel test to the issue of standing for a corporation claiming a s. 2(a) *Charter* right. Even if the test identified governed that issue, there was no evidence to support its application in this case. The better view, in any event, is that corporations do not enjoy private interest standing under s. 2(a) of the *Charter*. Morellato J.’s analysis of whether the s. 2(b) infringement was justified, was also framed by an erroneous and novel framework of analysis that failed to consider any state objectives, erred in its assessment of the value of the expression, and failed to consider the severity of the limitation of it or the context in which it arose. The appeal should be allowed and the petition dismissed.

## PART 1 - STATEMENT OF FACTS

### A. THE AGREEMENT

5. On or around May 28, 2018, Grace Chapel advised the City that it was hosting a youth conference (“**Youth Conference**”), and entered into a contract with the City to rent space at the City’s Anvil Centre on July 21, 2018 for that purpose (“**Agreement**”).<sup>1</sup>

6. On June 20, 2018, the City received a complaint notifying the City that the Youth Conference was an anti-LGBTQ event, and that Kari Simpson who was named as a facilitator of the event, was a well-known and very active anti-LGBTQ activist.<sup>2</sup> The complaint included a copy of the poster for the event.<sup>3</sup> The City noted that the graphics used to publicize the Youth Conference were almost identical to LGBTQ branding, specifically, rainbow graphics. The title for the Youth Conference used a substantially similar acronym, specifically “LGBT” for “Let God Be True”. The Youth Conference was open to the general public and targeted youth.<sup>4</sup>

7. Upon receiving this complaint, City staff researched Ms. Simpson online and found numerous news articles and social media posts regarding her anti-LGBTQ activities including such activities targeting youth.<sup>5</sup> City staff formed the view that the Youth Conference contravened the Agreement and the rules of the Anvil Centre including the Anvil Centre Booking and Space Allocation Policy and Procedure (“**Policy**”).<sup>6</sup>

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<sup>1</sup> Reasons, ¶¶10-11, Appeal Record (“**AR**”), p. 32; Affidavit of Ronald Brown, made December 27, 2018 [**Brown Affidavit**], ¶¶4-14, Ex A-D, F-J, Appeal Book (“**AB**”) pp. 6-41; Affidavit #1 of Vali Marling, made February 7, 2019 [**Marling Affidavit**], ¶¶15-16, Ex H, AB pp. 2-3, 60, 110-116

<sup>2</sup> Reasons, ¶14, AR Tab 3, p. 33; Marling Affidavit, Ex I, AB pp. 117-118

<sup>3</sup> Marling Affidavit, Ex I, AB pp. 117-118

<sup>4</sup> Reasons, ¶16, AR Tab 3, p. 33; Marling Affidavit, ¶¶17-18, Ex I, AB pp. 60, 117-118

<sup>5</sup> Reasons, ¶16, AR Tab 3, p. 34; Marling Affidavit, ¶18, Ex J, AB pp. 60, 119-156; Brown Affidavit, Ex O, AB p. 53

<sup>6</sup> Reasons, ¶16, AR Tab 3, p. 34; Marling Affidavit, ¶19, AB pp. 60-61

Specifically, they formed the view that Grace Chapel had misrepresented the purpose of the Youth Conference to the Anvil Centre in its communications. Further, the publicity for the Youth Conference could misrepresent the scope or purpose of the function. They understood the Youth Conference to be, in part, a platform for Ms. Simpson to disseminate her anti-LGBTQ views and formed the opinion that this promoted hatred against this group and discrimination, which is an unethical pursuit. The Youth Conference was otherwise immoral, improper, and may disrupt other users of the Anvil Centre or cause a public disorder. They further formed the opinion that the Youth Conference was incongruent with the Mission and Vision of the City and the Anvil Centre, both of which value inclusivity.<sup>7</sup> They recommended the Agreement be cancelled.<sup>8</sup>

8. On June 21, 2018, the City informed Mr. Brown by e-mail that the Anvil Centre was cancelling the booking (“**Cancellation**”). The City wrote:

We became aware today, that one of your event speakers/ facilitators, Kari Simpson, highlighted for your July 21st, 2018 event, vocally represents views and a perspective that run counter to City Of New Westminster and Anvil Centre booking policy.

Specifically Anvil Centre booking policy *restricts or prohibits user groups if they promote racism, hate, violence, censorship, crime or other unethical pursuits*. In accordance with our policy we are informing you that we are cancelling your booking and will immediately process a refund for the entirety of your booking fee.

Should you have any questions please do not hesitate to call me directly.<sup>9</sup>

9. Mr. Brown telephoned and spoke to a City representative, Ms. Hughes.<sup>10</sup> He explained that no hate, racism or violence would be promoted at the Youth Conference and asked her to reconsider the Cancellation.<sup>11</sup> Mr. Brown then e-mailed the City and

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<sup>7</sup> Reasons, ¶16, AR Tab 3, p. 34; Marling Affidavit, ¶19, AB pp. 60-61

<sup>8</sup> Reasons, ¶¶17-18, AR Tab 3, p. 34-35; Marling Affidavit, ¶20, Ex K, AB pp. 61, 157

<sup>9</sup> Reasons, ¶20, AR Tab 3, p. 36; Marling Affidavit, ¶21, Ex L, AB pp. 61, 160 (emphasis in original)

<sup>10</sup> Reasons, ¶21, AR Tab 3, p. 36; Brown Affidavit, ¶19, AB p. 4

<sup>11</sup> Brown Affidavit, ¶19, AB p. 4; Marling Affidavit, Ex L, AB p. 159

sought to discuss the matter again.<sup>12</sup> The City agreed to meet with Mr. Brown; however, the City indicated that this offer to meet did not change the decision and the event remained cancelled.<sup>13</sup> No such second meeting occurred.<sup>14</sup>

10. Weeks later, James Kitchen, a lawyer with the Justice Centre for Constitutional Freedoms, wrote to the City on behalf of Grace Chapel and asked that the City “adhere to its contractual and constitutional obligations” to permit the Youth Conference to proceed.<sup>15</sup> The City did not respond.<sup>16</sup>

## **B. PROCEDURAL HISTORY**

11. On December 28, 2018, despite its understanding that the dispute was contractual, Grace Chapel filed the within petition<sup>17</sup> seeking relief under the *Judicial Review Procedure Act*<sup>18</sup> and declarations under ss. 2(a), 2(b), 2(d) and 24 of the *Charter*.<sup>19</sup>

12. The City objected that the Cancellation was not subject to judicial review. The dispute was contractual and the proceeding ought to have been constituted as an action. The City argued the Court should not adjudicate the *Charter* issues.<sup>20</sup> Although the City acknowledged it was possible to adjudicate *Charter* claims on a summary basis, including through a petition proceeding when properly brought under the *JRPA*, it argued the full

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<sup>12</sup> Reasons, ¶22, AR Tab 3, p. 36; Marling Affidavit, Ex L, AB p. 159

<sup>13</sup> Reasons, ¶23, AR Tab 3, p. 37; Marling Affidavit, Ex L, AB p. 159

<sup>14</sup> Reasons, ¶25, AR Tab 3, p. 37; Marling Affidavit, ¶22, AB p. 61

<sup>15</sup> Reasons, ¶¶25-27, AR Tab 3, pp. 37-38; Brown Affidavit, Ex P, AB pp. 54-56

<sup>16</sup> Reasons, ¶27, AR Tab 3, p. 38; Marling Affidavit, ¶24, AB p. 62

<sup>17</sup> Petition, AR Tab 1, p. 3

<sup>18</sup> *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 [*JRPA*], s. 2(2)(a), 2(2)(b)

<sup>19</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [*Charter*], ss. 2(a), 2(b), 2(d), 24. Although s. 15 of the *Charter* was pleaded, it was not advanced before the Chambers Judge: Reasons, ¶122, AR Tab 3, p. 69

<sup>20</sup> Response to Petition, AR Tab 2, pp. 16-17, 19

panoply of procedural rights is usually preferable in *Charter* adjudication and objected to the abrogation of its procedural rights as the petition was not properly brought.<sup>21</sup> In the alternative, it defended its decision on administrative and *Charter* grounds.<sup>22</sup>

13. Justice Morellato correctly concluded that the *JRPA* did not apply. The City was not exercising a statutory power when it terminated the Agreement.<sup>23</sup> Nor was the Cancellation of a sufficiently public character to engage judicial review remedies.<sup>24</sup>

14. Although the underlying subject matter was not suitable for judicial review, Morellato J. nevertheless erred in law concluding that s. 24(1) of the *Charter* “authorized” aggrieved parties to make an application for relief by way of petition under the *Supreme Court Civil Rules*.<sup>25</sup> She therefore adjudicated the *Charter* claims. In so doing, she properly dismissed the claims advanced under s. 2(d) of the *Charter* and under the doctrine of state neutrality.<sup>26</sup>

15. However, neither the evidence nor the jurisprudence supported Morellato J.’s conclusion that Grace Chapel, an incorporated society, had standing to assert s. 2(a) rights under the *Charter*.<sup>27</sup> In the face of no admissible evidence of any religious belief, let alone a religious belief regarding sexuality and gender or a religious belief that called for the Youth Conference as a line of conduct, the Chambers Judge erroneously held

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<sup>21</sup> The City did not argue that Grace Chapel had raised a triable issue that should be converted to an action and did not argue in favour of bifurcating the issues and converting only the s. 2(a) issue to an action: Reasons, ¶¶137, AR Tab 3, p. 74; Respondent’s Written Submissions, ¶¶7-8, 39-48, AB pp. 165-166, 173-175

<sup>22</sup> Response to Petition, AR Tab 2, pp. 17-22

<sup>23</sup> Reasons, ¶¶38-51, AR Tab 3, pp. 42-46

<sup>24</sup> Reasons, ¶¶52-77, AR Tab 3, pp. 46-54

<sup>25</sup> Reasons, ¶¶87-88, AR Tab 3, pp. 57-58 citing, among other things, *Supreme Court Civil Rules*, Rules 1-2(4), 1-2(5)

<sup>26</sup> Reasons, ¶¶118-121, 146, AR Tab 3, pp. 68-69, 76

<sup>27</sup> Reasons, ¶¶129-130, AR Tab 3, p. 72

there was a triable issue as to (a) the nexus between “sexuality and gender” and the petitioner’s religious beliefs and (b) whether the Cancellation had an objective impact that is more than trivial or insubstantial on Grace Chapel’s “ability to manifest those beliefs (if they are made out)”.<sup>28</sup>

16. Morellato J. found that the Youth Conference had expressive content<sup>29</sup> that was not excluded from *Charter* protection.<sup>30</sup> Turning to justifiable limits on expressive rights, she erroneously concluded that neither the *Oakes*<sup>31</sup> test nor the *Doré*<sup>32</sup> framework of analysis applied and proceeded to engage in a novel legal analysis of her own making that was not urged upon her by any party.<sup>33</sup> She held: “I am of the view that ‘analytical harmony’ can be found by upholding the *Charter* values at play, through applying the criteria of minimal impairment and the proportionate balancing of *Charter* protections, viewed through the lens of reasonableness.”<sup>34</sup> She found that neither criterion was satisfied and the City’s infringement of Grace Chapel’s freedom of expression was unjustified.<sup>35</sup>

## PART 2 - ERRORS IN JUDGMENT

17. Morellato J. erred in adjudicating the *Charter* claims in the within petition proceeding.

18. Morellato J. erred in declaring that Grace Chapel had standing to seek a declaration under s. 2(a) of the *Charter* and was at liberty to convert the s. 2(a) claim to an action pursuant to Rule 22-1(7)(d).

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<sup>28</sup> Reasons, ¶¶143-145, AR Tab 3, pp. 75-76

<sup>29</sup> Reasons, ¶94, AR Tab 3, p. 60

<sup>30</sup> Reasons, ¶¶95-101, AR Tab 3, pp. 60-62

<sup>31</sup> *R v Oakes*, [1986] 1 SCR 103 [*Oakes*]

<sup>32</sup> *Doré v Barreau du Québec*, 2012 SCC 12 [*Doré*]

<sup>33</sup> Reasons, ¶¶102-110, AR Tab 3, pp. 62-66

<sup>34</sup> Reasons, ¶110, AR Tab 3, p. 66

<sup>35</sup> Reasons, ¶110, AR Tab 3, p. 66

19. Morellato J. erred in declaring that the City unjustifiably infringed Grace Chapel's right to freedom of expression under s. 2(b) of the *Charter*.

### PART 3 - ARGUMENT

#### A. REQUEST FOR S. 24(1) RELIEF IMPROPERLY BROUGHT BY PETITION

20. Morellato J. erred in law in finding that this proceeding was properly before the Court by way of petition.<sup>36</sup> The standard of review is correctness.<sup>37</sup>

21. The *Supreme Court Civil Rules* provide in relevant part that unless an enactment or the Rules otherwise provide, every proceeding must be started by the filing of a notice of civil claim.<sup>38</sup> One exception set out in the Rules is if an enactment, other than the Rules, "authorizes" an application to the court or to a judge, the application must be by petition under Rule 16-1 or requisition under Rule 17-1, or if the application is for an order other than a final order, by application.<sup>39</sup>

22. Morellato J. incorrectly concluded that s. 24(1) of the *Charter* "authorized" an application to the Court so that an application for declaratory relief was properly brought by petition.<sup>40</sup>

23. None of the cases cited by Morellato J. stand for that proposition.<sup>41</sup> To the contrary, in *Banks v Canada*, in dismissing the application for injunctive relief, the Federal Court rightly held that s. 24(1) of the *Charter* did not authorize an altered procedure governing the Court and did not empower it to make the declaration sought on a simple motion.<sup>42</sup>

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<sup>36</sup> Reasons, ¶88, AR Tab 3, pp. 57-58

<sup>37</sup> *British Columbia (Milk Marketing Board) v Saputo Products Canada G.P. / Saputo Produits Laitiers Canada S.E.N.C.*, 2017 BCCA 247 [*Saputo*], ¶38

<sup>38</sup> *Supreme Court Civil Rules*, Rule 2-1(1)

<sup>39</sup> *Supreme Court Civil Rules*, Rules 1-2(4) and (5), 2-1(2)(b)

<sup>40</sup> Reasons, ¶¶87-88, AR Tab 3, pp. 57-58

<sup>41</sup> Reasons, ¶88, AR Tab 3, pp. 57-58

<sup>42</sup> *Banks v Canada*, (1983), 12 Imm LR (2d) 305 (FC), ¶¶5-6

*McKenzie v Canadian Human Rights Commission* was to the same effect where the Federal Court put it succinctly:

17 Put another way, section 24 of the *Charter* does not authorize a complainant to casually ignore the prescribed rules of procedure of the Court when making a claim. If it were otherwise, havoc would result in the plethora of litigation arising under the *Charter* in the sense that the Court would be called upon to adjudicate on claims in the abstract without any regard to rules of procedure for the pursuit or enforcement of those claims.<sup>43</sup>

24. The litigation in *Saputo* was also not found by this Court to be authorized by s. 24 of the *Charter*. It was found to be authorized by the *Natural Products Marketing (B.C.) Act*.<sup>44</sup>

25. This Court has held that challenges to the constitutional validity or applicability of a law, based on its inconsistency with any part of the Constitution of Canada, are not authorized by s. 24(1) of the *Charter* and may not be brought by petition.<sup>45</sup>

26. Challenges to the constitutional validity of state action are also not authorized by s. 24(1) of the *Charter*. Section 24(1) does not extend the basic jurisdiction of the courts and tribunals; its applicability depends on a jurisdictional basis external to the *Charter* itself.<sup>46</sup> A superior court judge has inherent jurisdiction to grant a declaration that state action violates the *Charter* without relying on s. 24(1).<sup>47</sup> The *Supreme Court Civil Rules* dictate the correct form of proceeding.<sup>48</sup> It is permissible to seek such declaratory relief

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<sup>43</sup> *McKenzie v Canadian Human Rights Commission* (1985), 33 ACWS (2d) 254 (FC), ¶17

<sup>44</sup> *Saputo; Natural Products Marketing (B.C.) Act*, R.S.B.C. 1996, c. 330, ss. 15 and 17

<sup>45</sup> *Transpacific Tours Ltd (c.o.b. C.P. Air Holidays) v Canada (Director of Investigations and Research)* (1985), 68 BCLR 32 (SC)

<sup>46</sup> *Singh v Canada (Minister of Employment & Immigration)*, [1985] 1 SCR 177, p. 222; *British Columbia Civil Liberties Association v Canada (Attorney General)*, 2019 BCCA 228 [BCCLA], ¶256

<sup>47</sup> BCCLA, ¶254

<sup>48</sup> *Saputo*, ¶39

by way of petition where the claim is properly subject to judicial review.<sup>49</sup> It is also permissible to seek such declaratory relief, and other s. 24 remedies, by way of an action where the claim is properly framed as an action.<sup>50</sup>

27. The question before Morellato J. was whether the proceeding was properly constituted as a judicial review. Morellato J. correctly held it was not. The dispute was contractual in nature and Morellato J. was correct that it is “trite law that a conventional claim for breach of contract must be brought by way of an action”.<sup>51</sup> The *Charter* did not authorize Morellato J. to ignore the prescribed rules of procedure.

28. A requirement to follow those rules safeguards Grace Chapel’s right to seek judicial supervision of state action. It also safeguards procedural fairness for all parties to the litigation, and the Court and public’s repeatedly recognized interest in ensuring that judicial reasoning on issues engaging *Charter* rights is founded upon a full factual matrix and informed by the full social, legislative and cultural context.<sup>52</sup>

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<sup>49</sup> See for e.g. *L’Association des parents de l’école Rose-des-Vents v Conseil scolaire francophone de la Colombie-Britannique*, 2011 BCSC 89 [**L’Association**]; *Noyes v Sought Cariboo School District No. 30* (1985), 64 BCLR 287 (SC); *The Canadian Centre for Bio-Ethical v South Coast British Columbia Transportation Authority*, 2016 BCSC 1802, aff’d 2018 BCCA 344

<sup>50</sup> See e.g. *Ward v City of Vancouver*, 2007 BCSC 3 (remedies included declaratory relief and damages); *Henry v British Columbia*, 2016 BCSC 1038 (damages); *Carter v Canada (Attorney General)*, 2012 BCSC 886, ¶¶1400, 1414-115

<sup>51</sup> Reasons, ¶82, AR Tab 3, p. 56

<sup>52</sup> *MacKay v Manitoba*, [1989] 2 S.C.R. 357, ¶¶9-11; *British Columbia (Attorney General) v Christie*, [2007] 1 SCR 873, ¶28; *Ermineskin Indian Band and Nation v Canada*, [2009] 1 SCR 222, ¶¶193-194; *Gosselin v Quebec (Attorney General)*, [2002] 4 SCR 429, ¶¶17-19, 47; *Edmonton Journal v Alberta (Attorney General)*, [1989] 2 SCR 1326, ¶¶43-52; *Thomson Newspapers Co v Canada (Attorney General)*, [1998] 1 SCR 877, ¶87; *L’Association*, ¶¶41-45

29. Morellato J.'s error resulted in substantial unfairness to the City and an impoverished record. The City was denied its right to discovery and oral evidence and limited in what evidence it could put into the record to justify any limitation of *Charter* interests. In this province, the principle that the evidence on judicial review is limited to the record before the decision-maker continues to apply despite that the *Charter* is raised.<sup>53</sup> Thus, when a party like Grace Chapel incorrectly initiates a proceeding under the *JRPA*, evidence that may address the constitutional issues that was not before the decision-maker cannot be led as such evidence is not admissible on judicial review. The unfairness was compounded in this case because despite that it was Grace Chapel seeking to abrogate all procedural rights and the City who objected, Morellato J. saw fit to adjudicate the reasonableness of the limitation on Grace Chapel's expressive rights summarily on the limited record before her while giving Grace Chapel a second shot at establishing its religious rights were engaged.

30. Finally, adjudicating a petition proceeding that ought to have been initiated as an action will likely result in an undesirable multiplicity of proceedings, as it did in this case. As noted, Morellato J. essentially bifurcated the *Charter* issues and resolved some alleged breaches summarily (ss. 2(b), 2(d)) while sending another (s. 2(a)) to the trial list where a fuller record can be developed. Such an approach should be avoided as it results in unnecessary expenditure of resources for both the parties and the courts and risks incompatible findings. This risk of incompatible findings is especially high in cases like this where the alleged breach of ss. 2(a) and 2(b) of the *Charter* and the City's justification for same are so closely connected and overlapping.

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<sup>53</sup> *Beedie (Keefer Street) Holdings Ltd. v Vancouver (City)*, 2021 BCCA 160, ¶¶76-78; *Beaudoin v British Columbia*, 2021 BCSC 512, ¶97

## B. SECTION 2(A) OF THE *CHARTER*

### a) Grace Chapel Lacks Standing

31. Morellato J. erred in finding that Grace Chapel, an incorporated society, had private interest standing to assert s. 2(a) rights under the *Charter*.<sup>54</sup> Neither the jurisprudence nor the evidentiary record supported that finding.

32. The jurisprudence addressing whether or not corporations enjoy protection of s. 2(a) of the *Charter* remains undecided.<sup>55</sup> Despite this, Morellato J. adopted a test formulated by only three concurring justices in *Loyola* to resolve the issue of standing.<sup>56</sup> That test concluded that “an organization meets the requirements for s. 2(a) protection if (1) it is constituted primarily for religious purposes and (2) its operation accords with these religious purposes.”<sup>57</sup>

33. However, there was no evidence to ground even this novel approach to the issue of standing. The only admissible and relevant evidence that might address these topics was given by Ronald Brown, administrator for Grace Chapel, as follows:

The Redeemed Christian Church of God, British Columbia, also known as Grace Chapel ("Grace Chapel"), is a parish of the Redeemed Christian Church of God, an international Christian denomination. Grace Chapel is a multi-ethnic church that meets in New Westminster, British Columbia. Grace Chapel does not own any facilities, but rents meeting space in New Westminster for its Sunday services, events and office needs.<sup>58</sup>

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<sup>54</sup> Reasons, ¶¶128-130, AR Tab 3, pp. 71-72

<sup>55</sup> *R v Big M Drug Mart Ltd.*, [1985] 1 SCR 295, ¶¶40-43; *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12, [*Loyola*], ¶33; *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32 [*TWU*], ¶¶2018-220

<sup>56</sup> Reasons, ¶¶128-130, AR Tab 3, p. 71-72

<sup>57</sup> *Loyola*, ¶100

<sup>58</sup> Brown Affidavit, ¶2, AB p. 1

34. Even if that paragraph could support that Grace Chapel was constituted primarily for a religious purpose, it provided no support for any finding that the Youth Conference was a part of Grace Chapel's operation that accorded with that purpose.

35. Justice Morellato committed a palpable and overriding error of fact in finding that "the Youth Conference was to 'consider Biblical views'" and therefore Grace Chapel's operations accorded with a religious purpose.<sup>59</sup>

36. The letter that Morellato J. relied on for this proposition was hearsay evidence that was not admissible for the truth of its contents. Although it was appended to Mr. Brown's affidavit, it post-dated the Cancellation and was authored by a third party, specifically Mr. Kitchen of the Justice Centre for Constitutional Freedoms, a lawyer acting on Grace Chapel's behalf.<sup>60</sup> Its contents were not adopted or endorsed by Mr. Brown.<sup>61</sup> The *Supreme Court Civil Rules* provide that "an affidavit must state only what a person swearing or affirming the affidavit would be permitted to state in evidence at trial".<sup>62</sup> There is an exception to this rule in respect of an application that does not seek a final order, but Grace Chapel was seeking final orders and that exception was therefore inapplicable. The vague hearsay evidence was completely unnecessary as Mr. Brown could himself have explained what the purpose of the Youth Conference was and whether and how that purpose related to religious beliefs. Although it was exhibited to Mr. Brown's affidavit, it was inadmissible to prove that the Youth Conference was to consider Biblical views or that this aspect of Grace Chapel's operations accorded with any religious purpose.

37. There was also no evidence of:

- a. whether Grace Chapel had any members;
- b. if so, what the beliefs of those members were;

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<sup>59</sup> Reasons, ¶130, AR Tab 3, p. 72

<sup>60</sup> Reasons, ¶¶25-26, AR Tab 3, p. 37

<sup>61</sup> Brown Affidavit, ¶23, AB p. 5

<sup>62</sup> *Supreme Court Civil Rules*, Rule 22-2(12), (13)

- c. what the relevant beliefs of Grace Chapel were (except that it was Christian);<sup>63</sup>
- d. whether the Youth Conference accorded with Grace Chapel's religious beliefs (or those of its members or prospective attendees) or purposes.

38. In light of this evidentiary lacunae, even judgments recognizing standing of organizations to advance s. 2(a) rights based on the religious beliefs of the membership of that organization, such as the majority judgments in *TWU*<sup>64</sup> and *Hutterian Brethren*,<sup>65</sup> and/or based on determinations that the organization is constituted primarily for religious purposes and its operations accord with religious purposes, such as the minority judgment in *Loyola*,<sup>66</sup> were of no assistance to Grace Chapel and the Chambers Judge therefore erred in relying on *Loyola* in the absence of such evidence.<sup>67</sup>

39. Finally, even if there had been an evidentiary foundation for the findings made by Morellato J., and there was not, the appellant submits that the more principled approach to the question of standing to assert s. 2(a) rights under the *Charter*, one consistent with both the jurisprudence considering similarly personal *Charter* rights and also in respect of the evolving law of standing, is that a society lacks private interest standing to assert s. 2(a) rights under the *Charter*.

40. Morellato J. wrongly emphasized that a corporation such as Grace Chapel is a "person" and enjoys "rights, powers, and privileges" of an individual under the *Society Act*.<sup>68</sup> Like other rights that are personal in nature, such as the right to be free from cruel and unusual punishment and s. 7 rights, the better interpretation is that the personal rights

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<sup>63</sup> Brown Affidavit, ¶2, AB p. 1

<sup>64</sup> Where there was also an individual claimant.

<sup>65</sup> *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37 [*Hutterian Brethren*], where the applicant was a church and a colony.

<sup>66</sup> Where there was also an individual claimant.

<sup>67</sup> Reasons, ¶¶127, 129, AR Tab 3, pp. 71, 72

<sup>68</sup> Reasons, ¶128, AR Tab 3, p. 71

protected by s. 2(a) do not apply to corporations despite the legal recognition of their status as “persons”. As a majority of the Supreme Court of Canada recently reasoned in *Quebec*, a case delineating the scope of s. 12 *Charter* rights “[s]imply put, the text “cruel and unusual” denotes protection that “only human beings can enjoy”.<sup>69</sup> Likewise, it is simply not possible to ascribe a conscientiously held belief to a society to advance on its own behalf. A conscientiously held belief is something only a human being can enjoy.

41. Instead, corporations and other non-governmental collective entities that seek to advance the rights of their members or other third parties, should be required to satisfy the test for public interest standing. Morellato J. failed to explain why the principle of legality, of such central importance to the issue of public interest standing, should support a claim of private interest standing for an organization advancing religious beliefs.<sup>70</sup> Like other non-governmental entities which seek to advance the rights of their membership, the principle of legality is equally and sufficiently protected by permitting societies like parishes to apply for public interest standing to advance s. 2(a) rights.

42. In this instance, for the same reasons set out above, even if such an argument had been advanced below (and it was not) there was no evidentiary foundation that could have supported a claim of public interest standing insofar as there was no evidence of what Grace Chapel’s interest was in the s. 2(a) issue advanced in the case.<sup>71</sup>

b) No triable issue

43. Morellato J. erred in converting the s. 2(a) issue into an action under Rule 22-1. No triable issue was raised by Grace Chapel in respect of whether s. 2(a) of the *Charter*

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<sup>69</sup> *Quebec (Attorney General) v 9147-0732 Québec inc.*, 2020 SCC 32 [*Quebec*], ¶1 citing *Irwin Toy Ltd. v Quebec (Attorney General)*, [1989] 1 SCR 927, p 1004

<sup>70</sup> Reasons, ¶128, AR Tab 3, p. 71

<sup>71</sup> *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45

was infringed on the evidence. The City did not argue otherwise. To the extent Morellato J. suggests that it did, she misapprehended the City's argument.<sup>72</sup>

44. There is no distinction between what must be found in order to deny summary judgment on an application under Rule 9-6 and what must be found so as to order a trial of a proceeding under Rule 22-1(7)(d). The issue was whether Grace Chapel had raised a *bona fide* triable issue on the relevant facts and law.<sup>73</sup>

45. Leaving aside the fatal issue of standing, an infringement of s. 2(a) of the *Charter* will be made out where:

- a. the claimant sincerely believes in a belief or practice that has a nexus with religion; and
- b. the impugned measure interferes with the claimant's ability to act in accordance with his or her religious beliefs in a manner that is more than trivial or insubstantial.<sup>74</sup>

46. Even assuming it had standing, here:

- a. There was no admissible evidence about any belief or practice of Grace Chapel's that had a nexus with religion. The Chambers Judge again erroneously relied on the inadmissible hearsay evidence appended to Mr. Brown's affidavit that stated that the religious beliefs in issue were Biblical views of sexuality.<sup>75</sup> However, even if that evidence was admissible, and as explained above it was not, it was insufficient to raise a triable issue for the first step of the test. The first step of the test required Grace Chapel to show that it had a sincere practice or belief that has a nexus with religion,

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<sup>72</sup> Reasons, ¶137, AR Tab 3, p. 74; Respondent's Written Submissions, ¶¶7-8, 39-48, 55-65, AB pp. 165-166, 173-175, 177-181

<sup>73</sup> *Saputo*, ¶44

<sup>74</sup> *TWU*, ¶63

<sup>75</sup> Reasons, ¶136, AR Tab 3, pp. 73-74

“which calls for a particular line of conduct, either by being objectively or subjectively obligatory or customary, or by, in general, subjectively engendering a personal connection with the divine or with the subject or object of an individual’s spiritual faith”.<sup>76</sup> There was simply no evidence that went to that question.

- b. Grace Chapel was required to provide objective proof to satisfy the second step of the test.<sup>77</sup> While the Cancellation prevented the Youth Conference from occurring *at the Anvil Centre*, there was also no evidence (objective or subjective) that the Cancellation interfered with Grace Chapel’s ability to act in accordance with its religious beliefs at all, let alone in a manner that was more than trivial or insubstantial.

47. The evidence in this case can be contrasted with evidence typically adduced in s. 2(a) cases. For example, in *TWU*, there was evidence from several TWU students testifying as to how their spiritual growth would be engendered by studying law in a religious learning environment.<sup>78</sup> There was evidence as to how TWU was founded and the religious principles and purposes it serves.<sup>79</sup> There was evidence from several TWU alumni emphasizing the spiritual benefits of receiving an education from a Christian perspective.<sup>80</sup> These beliefs were supported by the adoption of the “Covenant” which was also exhibited in evidence.<sup>81</sup> The affiants testified as to how the Covenant supported the religious environment at TWU and how it enhanced their religious beliefs.<sup>82</sup> Even in the face of all of that evidence, when it came to considering the proportionality of the decision to reject TWU’s proposed law school, the majority of the Supreme Court of Canada found

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<sup>76</sup> *Syndicat Northcrest v Amselem*, 2004 SCC 47, ¶156 (emphasis added)

<sup>77</sup> *S.L. v Commission scolaire des Chênes*, 2012 SCC 7, ¶2

<sup>78</sup> *TWU*, ¶166

<sup>79</sup> *TWU*, ¶168

<sup>80</sup> *TWU*, ¶169

<sup>81</sup> *TWU*, ¶171

<sup>82</sup> *TWU*, ¶172

that limitation to be “of minor significance because a mandatory covenant is, on the record before us, not absolutely required for the religious practice at issue”.<sup>83</sup>

48. Similar extensive evidence was also provided in the case of *Loyola*, including evidence from expert witnesses in theology, religion, and philosophy, and evidence from senior officials within Loyola’s organization including its principal.<sup>84</sup>

49. In this case, there was nothing comparable. This was not a situation where the City asked the Chambers judge to weigh evidence, decline to draw inferences strongly supported by undisputed facts, or otherwise be confounded by evidentiary conflicts.<sup>85</sup> Rather there was no evidence to weigh, no undisputed facts from which to draw an inference, no conflicts in the evidence. On an application for summary judgment, in the face of no evidence, a claim that s. 2(a) was engaged should have been dismissed. Applying the same test, Morellato J. erred in converting that issue to an action and ought to have dismissed it. Doing so was not unfair to Grace Chapel who was the party seeking summary adjudication of the issue.

### **C. FREEDOM OF EXPRESSION NOT UNJUSTIFIABLY INFRINGED**

#### **a) Section 2(b)**

50. It was not disputed in the Court below, that the Youth Conference had expressive content. As a majority of the Supreme Court of Canada recently observed, s. 2(b) of the *Charter* has traditionally been interpreted expansively. “Indeed, s. 2(b) has been interpreted so broadly that the framework has been criticized for setting too low a bar for establishing a s. 2(b) limitation, such that any consideration of its substantive reach and bounds is generally consigned to the limitations analysis under s. 1.”<sup>86</sup>

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<sup>83</sup> *TWU*, ¶187 see also ¶¶88-90

<sup>84</sup> *Loyola*, ¶¶86, 142, 144

<sup>85</sup> Reasons, ¶140, AR Tab 3, p. 75 citing *Kerfoot v Richter*, 2018 BCCA 238, ¶¶29-31 and *Ghag v Ghag*, 2021 BCCA 106, ¶¶41-44

<sup>86</sup> *Toronto (City) v Ontario (Attorney General)*, 2021 SCC 34 [*Toronto*], ¶14

b) Any Limit on Free Expression was Justifiable

51. Any engagement of s. 2(b) was justified. Morellato J. erred in refusing to apply the *Doré* framework of analysis.<sup>87</sup> This error fatally compromised her analysis of proportionality.

52. Instead of applying *Doré*, Morellato J. developed a novel justification analysis that was (a) inconsistent with the existing jurisprudence concerning the applicable framework of analysis, (b) failed to recognize or give *any weight* to the relevant state objectives (c) erred in its assessment of the value of the expression at issue (c) failed to consider the severity of the interference with it, and (d) erred in its assessment of reasonableness.

i. **The framework of analysis**

53. Morellato J. held:

[104] The *Doré* framework of analysis is not strictly applicable in this case. *Doré* itself was confined to the question of how “to protect *Charter* guarantees and the values they reflect in the context of adjudicated administrative decisions [my emphasis]” (para. 3). That is not the context here. *Doré* does not appear to have been designed to be applied to a contractual decision that falls outside of the ambit of administrative judicial review.

[105] The *Oakes* test is also inapt or difficult to apply in the context of this case....

[110] In the instant case, which is neither a challenge to a law of general application nor a judicial review of an administrative decision, I am of the view that “analytical harmony” can be found by upholding the *Charter* values at play, through applying the criteria of minimal impairment and the proportionate balancing of *Charter* protections, viewed through the lens of reasonableness....<sup>88</sup>

54. However, there is no dissonance in applying the *Doré* framework of analysis to the contractual context.

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<sup>87</sup> Reasons, ¶¶104-105, 110, AR Tab 3, pp. 63, 66

<sup>88</sup> Reasons, ¶¶104-105, 110, AR Tab 3, pp. 63, 66

55. The analyses developed in both *Oakes* and *Doré* are fundamentally concerned with whether there is an appropriate balance between rights and state objectives.<sup>89</sup> The purpose of both exercises is to ensure that the rights at issue are not disproportionately or unreasonably limited.<sup>90</sup> The assessment articulated in *Oakes* was necessarily adjusted by the Court to fit the contours of what was being assessed and by whom in *Doré*.<sup>91</sup>

56. Under the *Oakes* analysis, the Court is considering the constitutional validity of a law. The public objectives at stake are the objectives of the impugned law. The standard of review is correctness.<sup>92</sup>

57. The *Doré* framework of analysis should be applied when what is being considered is the constitutional validity of state action. The adjustment made by the Court in *Doré* recognizes that state actors are both bound by fundamental values and empowered to make decisions in light of constitutional guarantees and the values they reflect.<sup>93</sup> In the *Doré* analysis, the public objectives at stake are thus the objectives of the decision-maker's enabling statute. The standard of review is reasonableness.<sup>94</sup>

58. Drawing on the Court's reasoning in *Doré*, the Cancellation was made by an executive state actor bound by fundamental values and empowered to make the decision it did, and to do so in light of constitutional guarantees and the values they reflect.<sup>95</sup> Applying *Doré* in this slightly different context, the Court must remain sensitive to the contours of what is being assessed and by whom.<sup>96</sup> The decision-making at issue in this case was not an administrative adjudicative decision and not subject to judicial review.

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<sup>89</sup> *Doré*, ¶16

<sup>90</sup> *Doré*, ¶16

<sup>91</sup> *Doré*, ¶4

<sup>92</sup> *Doré*, ¶43

<sup>93</sup> *Doré*, ¶¶24, 28-29, 34-35

<sup>94</sup> *Doré*, ¶44

<sup>95</sup> *Doré*, ¶¶24, 28-29, 34-35

<sup>96</sup> *Doré*, ¶4

Rather it was a contractual decision exercised by a non-adjudicative decision-maker. We develop below how that context must inform the proportionality analysis.

**ii. The relevant objectives**

59. Although Morellato J. identified the criterion of “minimal impairment” as central to her analysis, she erred in failing to identify any societal objective against which limitations on *Charter* values were balanced instead focusing solely on “competing *Charter* rights”.<sup>97</sup>

60. The statutory objectives relevant in this case are the purposes of a municipality set out in the *Community Charter*:

- a. providing for good government of its community,
- b. providing for services, laws and other matters for community benefit,
- c. providing for stewardship of the public assets of its community, and
- d. fostering the economic, social and environmental well-being of its community.<sup>98</sup>

61. In furtherance of these objectives, the City has an Official Community Plan.<sup>99</sup> The Official Community Plan fleshes out these objectives and emphasizes principles of “belonging, caring, connectedness, equity, inclusion, participation, safety and security.”<sup>100</sup> It sets out the City’s objective to become one of the most welcoming and inclusive communities in British Columbia including by recognizing populations such as the LGBTQ community and celebrating their contributions to the City.<sup>101</sup> It indicates that the City supports initiatives that raise community awareness, understanding, acceptance and

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<sup>97</sup> Reasons, ¶¶110, 113, AR Tab 3, pp. 66-67

<sup>98</sup> *Community Charter*, S.B.C. 2003, c. 26, s. 7

<sup>99</sup> Marling Affidavit, Ex A, AB p. 63-104

<sup>100</sup> Marling Affidavit, Ex A, AB p. 73

<sup>101</sup> Marling Affidavit, Ex A, AB p. 77

celebration of diversity.<sup>102</sup> It emphasizes inclusion, safety, connectedness and engagement with under-represented, marginalized, and vulnerable populations.<sup>103</sup>

62. One of the public assets that the City provides stewardship of is the Anvil Centre. The Anvil Centre's Mission Statement provides further context for how the objectives apply in this particular setting consistent with the Official Community Plan.<sup>104</sup> Also providing context for how the objectives are operationalized at the Anvil Centre is the Policy which provides, among other things, that user groups will be restricted or prohibited if they, among other things, (a) promote racism, hate, violence, censorship, crime or other unethical pursuits (c) disrupts other facility patrons or operations (e) misrepresent the scope and/or purpose of the booked function and (f) intend to conduct activities in City facilities that are incongruent with the Mission and Vision of Anvil Centre and the City.<sup>105</sup>

63. Morellato J.'s failure to identify and give weight to these objectives suggest that she fundamentally misapprehended the minimal impairment analysis. Instead, she collapsed minimal impairment with proportionality, and even there simply weighed competing *Charter* values against each other, giving no weight to the state's legitimate interest reflected in the relevant objectives or to any other benefits that inhere in furthering the objectives that underlie its authority. We return to this point below.

### iii. The worthiness of the expression

64. In weighing the *Charter* values, Morellato J. erred in refusing to assess the worthiness of the expressive activity. Morellato J. held:

[112] In a free and democratic society, the exchange and expression of diverse and often controversial or unpopular ideas may cause discomfort. It is, in a sense, the price we pay for our freedom. Once governments begin

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<sup>102</sup> Marling Affidavit, Ex A, AB p. 77

<sup>103</sup> Marling Affidavit, Ex A, AB p. 79-80, 87

<sup>104</sup> Marling Affidavit, ¶6, AB p. 58

<sup>105</sup> Brown Affidavit, Ex O, AB p. 53; see also Marling Affidavit, Ex E, AB p. 107

to argue that the expression of some ideas are less valuable than others, we find ourselves on dangerous ground.<sup>106</sup>

65. However, the worthiness of the expressive activity is relevant under any proportionality analysis and the Court's obligation is to assess it. The majority explained in *Keegstra* that "the s. 1 analysis of a limit upon s. 2(b) cannot ignore the nature of the expressive activity which the state seeks to restrict."<sup>107</sup> Thus, it is relatively easy to justify limitations on low value expression.<sup>108</sup>

66. As noted above, Grace Chapel provided little information to either the City, or later the Court, about the expressive content of the Youth Conference. Prior to the Cancellation, Grace Chapel indicated only that the event was a "youth conference."<sup>109</sup>

67. The Chambers Judge was also wrong that the City took no time to inform itself about the "anticipated content or focal points of the speakers at the Youth Conference".<sup>110</sup>

68. The City was reasonably informed about the focal point of the Youth Conference. It was entitled to rely on Grace Chapel's own publicity materials in understanding the focal points of the Youth Conference. That poster included rainbow graphics and the initials "LGBT" and listed Kari Simpson as a facilitator of the event. The City noted that the graphics used to publicize the Youth Conference were almost identical to LGBTQ branding, specifically, rainbow graphics and as such could be misleading. The title for the Youth Conference used a substantially similar acronym, specifically "LGBT". The playbill listed a speaker, a singer, a number of pastors, and Ms. Simpson as a "facilitator". The

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<sup>106</sup> Reasons, ¶112, AR Tab 3, p. 67 (emphasis added)

<sup>107</sup> *R v Keegstra*, [1990] 3 SCR 697 [*Keegstra*], p. 760

<sup>108</sup> *Keegstra*, p. 764; *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11, ¶104 [*Whatcott*]

<sup>109</sup> Brown Affidavit, Ex A, AB pp. 6-7

<sup>110</sup> Reasons, ¶113, AR Tab 3, p. 67

playbill indicated that registration was free. The Youth Conference was open to the general public.<sup>111</sup>

69. The City was also entitled to rely on the complaint. The complaint indicated that the Youth Conference was an anti-lesbian, gay, bisexual, transgender and queer (anti-**“LGBTQ”**) event, and that Kari Simpson, named as a facilitator of the conference, was a well-known and very active anti-LGBTQ activist and the face and voice behind Culture Guard, a well known anti-LGBTQ group in the Lower Mainland.<sup>112</sup>

70. In light of the complaint and the playbill, and prior to the Cancellation, the City independently researched Ms. Simpson’s online presence. The City’s online research quickly confirmed that Ms. Simpson was a notorious, active, and vocal anti-LGBTQ activist who frequently engaged in very low value expression including some that targeted youth. That online content notes Ms. Simpson is a notorious anti-Sexual Orientation and Gender Identity (“SOGI”) activist.<sup>113</sup> Her expression had previously targeted youth in problematic ways.<sup>114</sup> In that online content, Ms. Simpson refers to homosexuality as a “dysfunctional sexual orientation” amounting to a disability.<sup>115</sup> She advocates for “sexual re-orientation therapy.”<sup>116</sup> She deliberately mis-genders a transgendered women claiming they are under a “delusion” and calling them “men in lipstick”.<sup>117</sup> The online content makes clear these are not isolated or atypical comments; rather, this type of expression is the focus of Ms. Simpson’s advocacy.

71. Ms. Marling deposed:

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<sup>111</sup> Reasons, ¶13, AR Tab 3, p. 67; Marling Affidavit, ¶17, Ex I, Ex L, AB pp. 60, 117-118, 159-160

<sup>112</sup> Reasons, ¶14, AR Tab 3, p. 33; Marling Affidavit, Ex I, AB p. 117

<sup>113</sup> Marling Affidavit, Ex J, AB pp. 119-155

<sup>114</sup> Marling Affidavit, Ex J, AB pp. 119-122

<sup>115</sup> Marling Affidavit, Ex J, AB p. 124

<sup>116</sup> Marling Affidavit, Ex J, AB p. 124

<sup>117</sup> Marling Affidavit, Ex J, AB pp. 128-129

We formed the view that the Event contravened the Agreement and the Policy. Specifically, we formed the view that the petitioner had misrepresented the purpose of the Event to the Anvil Centre in its communications. Further, the publicity for the Event could misrepresent the scope or purpose of the function. We understood the function to be, in part, a platform for Ms. Simpson to disseminate her anti-LGBTQ views and we formed the opinion that this activity was discriminatory, promoted hatred against this group and discrimination, which is an unethical pursuit. The Event was otherwise immoral, improper, and may disrupt other users of the Anvil Centre and cause a public disorder. We further formed the opinion that the Event was incongruent with the Mission and Vision of the City and the Anvil Centre, both of which value inclusivity.<sup>118</sup>

72. Despite this evidence, the Chambers Judge doubted whether Ms. Simpson would actually be speaking at the event and whether the City's "assumptions about the Youth Conference" were reasonable.<sup>119</sup>

73. However, there was no evidence to ground those doubts. In fact, all of the evidence in the communications that followed the Cancellation supported the reasonableness of the City's conclusion that Ms. Simpson would be speaking and vocally presenting her notorious anti-LGBTQ views.

74. After the Cancellation, in response to the City's advice that it had become aware that "one of your event speakers / facilitators, Kari Simpson... vocally represents views and perspective that run counter to City of New Westminster and Anvil Centre booking policy",<sup>120</sup> Grace Chapel telephoned the City. There is no evidence that Grace Chapel took that opportunity to advise the City that Kari Simpson was merely a facilitator and would not be speaking and not vocally representing the very views the City was concerned about. There is no evidence that Grace Chapel made any attempt to elucidate any different focus for the other speakers at the Conference. The record indicates only that Grace Chapel stated "there will be no hate, racism or violence promoted at the

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<sup>118</sup> Reasons, ¶16, AR Tab 3, p. 33; Marling Affidavit, para. 17, AB p. 60

<sup>119</sup> Reasons, ¶111, 114-115, AR Tab 3, pp. 67-68

<sup>120</sup> Reasons, ¶20, AR Tab 3, p. 36; Brown Affidavit, Ex M, AB p. 47 (emphasis added)

Conference.”<sup>121</sup> There is little if anything in the record that suggests a basis on which the City might have reconsidered its decision at that point.

75. Grace Chapel then e-mailed the City. In this communication, Grace Chapel, again, did not suggest that Ms. Simpson would not be speaking at the event. Instead, it stated:

As discussed in our telephone conversation a short time ago, It is unfortunate that the Anvil Centre has taken the decision to cancel the event without first discussing the matter with us. If there are queries or concerns from the centre, we believe that due process should prevail and the centre should give us an opportunity to explain what our intentions are.

We are happy to meet with the Anvil Team to discussed [sic] the focus of the conference and to further highlight that there will be no hate, racism or violence promoted at our conference. This is a Christian conference for Teens and Youths and is opened to the general public.<sup>122</sup>

76. City staff responded indicating a willingness to meet but stated “Please understand that this does not change our decision and the event is cancelled.”<sup>123</sup> Grace Chapel chose not to meet with the City.<sup>124</sup> The Chambers Judge was therefore wrong to be critical that “the City was asked by Grace Chapel to reconsider its decision and it declined to do so.”<sup>125</sup> That is not complete and accurate. The City spoke with Grace Chapel and also agreed to meet with Grace Chapel a second time. The City’s email indicating that the decision stands in the meantime also puts Grace Chapel on notice that it should immediately take steps to find an alternate venue and mitigate any harm it might suffer.

77. Weeks later, Mr. Kitchen of the Justice Centre for Constitutional Freedoms, acting on Grace Chapel’s behalf, provided more information. Again, he did not distance the Youth Conference from Ms. Simpson’s views nor did he express any confusion about what views were expected and problematic to the City. Rather, he stated for the first time

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<sup>121</sup> Reasons, ¶21, AR Tab 3, p. 36; Brown Affidavit, ¶19, AB p. 4

<sup>122</sup> Reasons, ¶22, AR Tab 3, p. 36; Brown Affidavit, Ex N, AB p. 48

<sup>123</sup> Reasons, ¶23, AR Tab 3, p. 37; Marling Affidavit, ¶20, Ex L, AB pp. 61, 159

<sup>124</sup> Reasons, ¶25; AR, Tab 3, p. 37; Marling Affidavit, ¶22, AB p. 61

<sup>125</sup> Reasons, ¶115, AR Tab 3, p. 68

that “the focus of the conference is to consider Biblical views regarding sexuality and identity issues.”<sup>126</sup> He acknowledged that Ms. Simpson was a “speaker at the conference”.<sup>127</sup> He took issue with the notion that “this speaker’s ‘views’ or ‘perspective’ could contravene the Anvil Centre Booking Policy”.<sup>128</sup> He stated that the City “cannot justify censorship by simply labelling expression it disapproves of as ‘racist’ or ‘hateful’”. Saying so does not make it so.”<sup>129</sup> He was not confounded by what views and expression were at issue; rather he defended the importance of expressing those views when he stated: “[i]t is not against the public interest to hold and express diverse views regarding sexuality”.<sup>130</sup> He stated:

Difficult though some may find the issues of human sexuality and gender, there must be room for free and open discussion about such issues, including religious, ideological and conscientiously-held beliefs regarding such issues. Peaceful, public expression regarding issues of sexuality and gender is entitled to protection under the fundamental Canadian value of free expression, even if such expression is unpopular or makes some people feel uncomfortable.<sup>131</sup>

78. The City’s understanding about the focus of the Youth Conference was a reasonable one in light of the information it had when it made the decision. There is also nothing in the record of communications made after the Cancellation that puts the reasonableness of that understanding into question. Finally, despite being served with the evidence upon which the City relied including its concerns about Ms. Simpson and the online content the City found about Ms. Simpson and her views, Grace Chapel led no further evidence to suggest that the planned content of the Youth Conference was other than the City concluded.

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<sup>126</sup> Reasons, ¶26, AR Tab 3, p. 37; Brown Affidavit, Ex P, p. 54

<sup>127</sup> Brown Affidavit, Ex P, p. 55

<sup>128</sup> Brown Affidavit, Ex P, p. 55

<sup>129</sup> Brown Affidavit, Ex P, AB p. 55; Brown Affidavit, Ex P, AB p. 55

<sup>130</sup> Reasons, ¶27, AR Tab 3, p. 37

<sup>131</sup> Brown Affidavit, Ex P, AB p. 56

79. In light of the City's reasonable understanding, it is therefore incorrect and inconsistent with the jurisprudence<sup>132</sup> to suggest that it is "dangerous" to argue that "the expression of some ideas are less valuable than others".<sup>133</sup> The expression of views such as that homosexuality is a "dysfunctional sexual orientation" amounting to a disability,<sup>134</sup> that anyone should have "sexual re-orientation therapy,"<sup>135</sup> or that transgendered people are under a "delusion" are less valuable than other ideas and should rightly be evaluated as such in any proportionality analysis.<sup>136</sup>

#### iv. Severity of the Limitation

80. Morellato J. erred in her assessment of the severity of the interference with the *Charter* protection which is required by *Doré*.<sup>137</sup>

81. Recently in *Toronto*, the Supreme Court of Canada clarified the scope of s. 2(b) rights in circumstances where claimants seek to impose a positive obligation on the state. Although that framework of analysis is not strictly applicable here where the purpose of the Cancellation was to curtail expression at the Anvil Center,<sup>138</sup> the Court's focus on the severity of the interference with the right in that context illuminates the significance of this consideration especially in cases like this where what is at stake is a voluntary contractual relationship to rent a particular city venue on a single date, and not a general prohibition on expression.

82. Morellato J. barely considered the severity of the interference in this case and when she did, she erred finding that the expressive activity was "undoubtedly of

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<sup>132</sup> *Keegstra*, p. 760

<sup>133</sup> Reasons, ¶112, AR Tab 3, p. 67

<sup>134</sup> Marling Affidavit, Ex J, AB p. 124

<sup>135</sup> Marling Affidavit, Ex J, AB p. 124

<sup>136</sup> Marling Affidavit, Ex J, AB pp. 128-129

<sup>137</sup> *Doré*, ¶56, 63

<sup>138</sup> *Toronto*, ¶¶16-20, 24, 36

importance to Grace Chapel's members and perspective [sic] attendees".<sup>139</sup> That finding was a palpable and overriding error of fact that was unsupported by any evidence. There was no evidence that Grace Chapel had any members. Further, the Youth Conference was open to the general public, not targeted at any such members. Despite that the Youth Conference required registration, there was also no evidence that any prospective attendees had registered for the Youth Conference. There was also no evidence of what, if any, importance any person – including Grace Chapel itself, its members, or prospective attendees – placed on the expressive activity in question or on engaging in it at the Anvil Centre in particular.<sup>140</sup>

83. Although the Cancellation assuredly curtailed Grace Chapel's ability to access the Anvil Centre for that purpose, there was no evidence that this curtailment had a non-trivial impact on Grace Chapel's ability to express its views, whatever those were. As the Chambers Judge noted in respect of Grace Chapel's claimed breach of s. 2(a):

Clearly, the City's Decision had no impact on Grace Chapel's ability to hold its religious views. The question is whether the City's Decision to cancel the Agreement impacted Grace Chapel's ability to manifest those beliefs (if they are made out) in more than a non-substantial or non-trivial manner. While I am mindful that Grace Chapel could have booked space elsewhere, the evidence before me does not address how straightforward or difficult this option was, in fact. For example, the Decision was made after the Conference had been advertised. Does this suggest the Decision objectively impacted Grace Chapel's right to manifest its religious beliefs and practices?<sup>141</sup>

84. The same comments apply, *mutadis mutandis*, in respect of Grace Chapel's ability to express itself elsewhere which is relevant to a consideration of the severity of any limitation of its expressive freedoms. There is no evidence that any limitation of Grace Chapel's expressive freedom was non-trivial.

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<sup>139</sup> Reasons, ¶76, AR Tab 3, p. 54

<sup>140</sup> Brown Affidavit, AB pp. 1-56

<sup>141</sup> Reasons, ¶145, AR Tab 3, p. 76

**v. The Cancellation was Reasonable**

85. The Chambers Judge erred in her assessment of the reasonableness of the Cancellation.

86. First, she gave too little weight to the salutary impacts of the Cancellation. These are typically considered with some reference to the anticipated attainment of the asserted objectives which, again, did not feature in her analysis.<sup>142</sup>

87. The City was required to consider the overarching objectives of providing stewardship of the Anvil Centre and doing so in a manner that fostered the social well-being of all members of the community. The City's determination that those objectives were best furthered by emphasizing equity, inclusion, participation, safety and security for all, including the LGBTQ community, is entitled to deference. The City in this case interpreted its obligation to further these objectives as precluding hosting the Youth Conference at the Anvil Centre because a speaker at the Youth Conference vocally represents views and a perspective that run counter to those objectives. In light of the multiple users of the Anvil Centre, including ongoing work at that venue documenting oral histories and narratives from the LGBTQ community in New Westminster,<sup>143</sup> it was reasonable for the City to conclude that cancelling the event would prevent disruption of other users, promote and protect equity, inclusion, participation and safety and security for all. A salutary impact of this decision is not only its protection of LGBTQ rights, as Morellato J. found,<sup>144</sup> but social well-being for all in furtherance of an inclusive community.

88. Second, for the reasons set out above, Morellato J. ascribed too much weight to the value of the expression in question and the significance of any interference with it.

89. Third, Morellato J. erred in faulting the City for failing to consider how infringement of Grace Chapel's freedom of expression could be minimized and instead acting quickly

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<sup>142</sup> *Frank v Canada*, [2019] 1 SCR 3, ¶¶38, 76

<sup>143</sup> Marling Affidavit, ¶19, AB pp. 60-61

<sup>144</sup> Reasons, ¶114, AR Tab 3, p. 67

in terminating the Agreement.<sup>145</sup> This criticism ignores the context in which this particular decision was made. In terminating the Agreement, the City was simply exercising its unilateral option to revoke the Agreement on its determination that Grace Chapel had breached the terms of the Agreement. Such revocation was permitted where the City considered that Grace Chapel was doing anything that “in the reasonable opinion of Anvil Centre, is immoral, improper or may cause public disorder.”<sup>146</sup> The Policy also expressly states that “[e]vent bookings may be canceled, at any time”.<sup>147</sup>

90. The City had a reasonable opinion that the Youth Conference was immoral, improper or may cause public disorder. It understood the Youth Conference was targeting a vulnerable population (youth). It understood it was being conducted at the Anvil Centre pursuant to an Agreement that gave the City a right to revoke the Agreement, and that it had an event date approaching. In all those circumstances, the City was reasonable to act quickly to bring the Agreement to an end. In the commercial and contractual context in which the Cancellation arose, the swift action of the City to terminate the Agreement was possibly the most efficient way to mitigate future harms and the severity of any limitation of Grace Chapel’s expressive freedom insofar as it left it open to Grace Chapel to find an alternate venue.

91. In all the circumstances, the Cancellation was reasonable.

#### **PART 4 - NATURE OF ORDER SOUGHT**

92. The appeal is allowed.

93. The following orders of the the learned chambers judge are set aside: 1-2, 4.

94. The petition of the Redeemed Christian Church of God, filed December 28, 2018 be dismissed pursuant to s. 9(1) of the *Court of Appeal Act*.

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<sup>145</sup> Reasons, ¶¶113-116, AR Tab 3, pp. 67-68

<sup>146</sup> Reasons, ¶¶18, 39, AR Tab 3, pp. 35, 42; Brown Affidavit, Ex C, AB p. 14, clauses 7(b), 8(g)

<sup>147</sup> Reasons, ¶¶60, AR Tab 3, p. 49; Brown Affidavit, Ex O, AB p. 53

95. Grace Chapel will pay costs to the City of New Westminster, in this Court and the court below.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: November 10, 2021



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**Alison M. Latimer**  
Solicitor for the Appellant,  
City of New Westminster

**APPENDIX A - CANADIAN CHARTER OF RIGHTS AND FREEDOMS, PART I OF THE CONSTITUTION ACT, 1982, BEING SCHEDULE B TO THE CANADA ACT 1982 (UK), 182**

**Fundamental freedoms**

**2** Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;

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

...

(d) freedom of association.

**Enforcement of guaranteed rights and freedoms**

**24 (1)** Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

**Exclusion of evidence bringing administration of justice into disrepute**

**(2)** Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

## **APPENDIX B - COMMUNITY CHARTER, SBC 2003, C. 26**

7 The purposes of a municipality include

- (a) providing for good government of its community,
- (b) providing for services, laws and other matters for community benefit,
- (c) providing for stewardship of the public assets of its community, and
- (d) fostering the economic, social and environmental well-being of its community.

## **APPENDIX C - NATURAL PRODUCTS MARKETING (B.C.) ACT, RSBC 1996, C 330**

### **Enforcement of Act and regulations**

**15** (1) On application by the Provincial board, a marketing board or commission and on being satisfied that a provision of this Act or the regulations or a provision of a marketing scheme made by the Provincial board, marketing board or commission under this Act or an order, rule, determination or decision of the Provincial board, marketing board or commission made under this Act or made under powers exercisable, with the approval of the Lieutenant Governor in Council, under the federal Act, is not being complied with, the Supreme Court may

- (a) order and require a person to do promptly or within or at the time specified in the order, an act or thing that the court considers necessary for the purpose of compelling that person to comply with this Act, the regulations, the marketing scheme or the order, rule, determination or decision of the Provincial board, marketing board or commission, and
- (b) forbid, restrain or enjoin the doing or continuing of an act or thing that is contrary to this Act, the regulations, the marketing scheme or the order, rule, determination or decision of the Provincial board, marketing board or commission.

(2) If special circumstances require, on an application under subsection (1) made without notice to anyone, the court may make an interim order but the order must not be for a longer period of time than the court considers necessary for the purpose of enabling the matter to be heard and determined.

### **Enforcement**

**17** (1) An order, rule, determination or decision made by the Provincial board, a marketing board or commission or under this Act or made under a power exercisable under the federal Act, may be enforced, and the breach of an order, rule, determination

or decision may be restrained, without proof of damage and whether or not a penalty is imposed for the breach, by action or proceeding in the Supreme Court.

(2) An action or proceeding under subsection (1) may be brought or taken by and in the name of the Provincial board or a marketing board or commission, and neither the government nor the Attorney General is a necessary party to the action or proceeding.

## **APPENDIX D - [JUDICIAL REVIEW PROCEDURE ACT, RSBC 1996, C 241](#)**

### **Application for judicial review**

**2** (1) An application for judicial review must be brought by way of a petition proceeding.

(2) On an application for judicial review, the court may grant any relief that the applicant would be entitled to in any one or more of the proceedings for:

(a) relief in the nature of mandamus, prohibition or certiorari;

(b) a declaration or injunction, or both, in relation to the exercise, refusal to exercise, or proposed or purported exercise, of a statutory power.

## **APPENDIX E - [SUPREME COURT CIVIL RULES](#)**

### **Rule 1-2 — Citation and Application**

#### **Petitions and applications**

(4) If an enactment, other than these Supreme Court Civil Rules or the [Supreme Court Family Rules](#), authorizes an application to the court or to a judge, the application must be

(a) by petition under Rule 16-1 or requisition under Rule 17-1, or

(b) if the application is for an order other than a final order, by application under Part 8,

whether or not the enactment provides for the mode of application.

#### **Enactments of Canada**

(5) Subrule (4) does not apply if a particular mode of application is required by an enactment of Canada.

## **Rule 2-1 — Choosing the Correct Form of Proceeding**

### **Commencing proceedings by notice of civil claim**

(1) Unless an enactment or these Supreme Court Civil Rules otherwise provide, every proceeding must be started by the filing of a notice of civil claim under Part 3.

### **Commencing proceedings by petition or requisition**

(2) To start a proceeding in the following circumstances, a person must file a petition or, if Rule 17-1 applies, a requisition:

- (a) the person starting the proceeding is the only person who is interested in the relief claimed, or there is no person against whom relief is sought;
- (b) the proceeding is brought in respect of an application that is authorized by an enactment to be made to the court;
- (c) the sole or principal question at issue is alleged to be one of construction of an enactment, will, deed, oral or written contract or other document;
- (d) the relief, advice or direction sought relates to a question arising in the execution of a trust, or the performance of an act by a person in the person's capacity as trustee, or the determination of the persons entitled as creditors or otherwise to the trust property;
- (e) the relief, advice or direction sought relates to the maintenance, guardianship or property of infants or other persons under disability;
- (f) the relief sought is for payment of funds into or out of court;
- (g) the relief sought relates to land and is for
  - (i) a declaration of a beneficial interest in or a charge on land and of the character and extent of the interest or charge,
  - (ii) a declaration that settles the priority between interests or charges,
  - (iii) an order that cancels a certificate of title or making a title subject to an interest or charge, or

(iv) an order of partition or sale;

(h) the relief, advice or direction sought relates to the determination of a claim of solicitor and client privilege.

## **Rule 22-1 — Chambers Proceedings**

### **Definition**

(1) In this rule, "chambers proceeding" includes the following:

(a) a petition proceeding;

(b) a requisition proceeding that has been set for hearing under [Rule 17-1 \(5\)](#) (b);

(c) an application, including, without limitation, the following:

(i) an application to change or set aside a judgment;

(ii) a matter that is ordered to be disposed of other than at trial;

(d) an appeal from, or an application to confirm, change or set aside, an order, a report, a certificate or a recommendation of a master, registrar, special referee or other officer of the court;

(e) an action that has, or issues in an action that have, been ordered to be proceeded with by affidavit or on documents before the court, and stated cases, special cases and hearings on a point of law;

(f) an application for judgment under Rule 3-8, 7-7 (6), 9-6 or 9-7.

### **Evidence on an application**

(4) On a chambers proceeding, evidence must be given by affidavit, but the court may

(a) order the attendance for cross-examination of the person who swore or affirmed the affidavit, either before the court or before another person as the court directs,

(b) order the examination of a party or witness, either before the court or before another person as the court directs,

(c) give directions required for the discovery, inspection or production of a document or copy of that document,

(d) order an inquiry, assessment or accounting under Rule 18-1, and

(e) receive other forms of evidence.

### **Power of the court**

(7) Without limiting subrule (4), on the hearing of a chambers proceeding, the court may

(a) grant or refuse the relief claimed in whole or in part, or dispose of any question arising on the chambers proceeding,

(b) adjourn the chambers proceeding from time to time, either to a particular date or generally, and when the chambers proceeding is adjourned generally a party of record may set it down on 3 days' notice for further hearing,

(c) obtain the assistance of one or more experts, in which case Rule 11-5 applies, and

(d) order a trial of the chambers proceeding, either generally or on an issue, and order pleadings to be filed and, in that event, give directions for the conduct of the trial and of pre-trial proceedings and for the disposition of the chambers proceeding.

### **Rule 22-2 — Affidavits**

#### **Limitation on contents of affidavit**

(12) Subject to subrule (13), an affidavit must state only what a person swearing or affirming the affidavit would be permitted to state in evidence at a trial.

#### **Exception**

(13) An affidavit may contain statements as to the information and belief of the person swearing or affirming the affidavit, if

(a) the source of the information and belief is given, and

(b) the affidavit is made

- (i) in respect of an application that does not seek a final order, or
- (ii) by leave of the court under Rule 12-5 (71) (a) or 22-1 (4) (e).

## LIST OF AUTHORITIES

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<i>Banks v Canada</i> , (1983), 12 Imm LR (2d) 305 (FC)	23
<a href="#"><u>Beaudoin v British Columbia, 2021 BCSC 512</u></a>	29
<a href="#"><u>Beedie (Keefer Street) Holdings Ltd. v Vancouver (City), 2021 BCCA 160</u></a>	29
<a href="#"><u>British Columbia (Attorney General) v Christie, [2007] 1 SCR 873</u></a>	28
<a href="#"><u>British Columbia Civil Liberties Association v Canada (Attorney General), 2019 BCCA 228</u></a>	26
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<a href="#"><u>Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society, 2012 SCC 45</u></a>	42
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<a href="#"><u>Ghag v Ghag, 2021 BCCA 106</u></a>	49
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<a href="#"><u>Law Society of British Columbia v Trinity Western University, 2018 SCC 32</u></a>	32, 38, 45, 47
<a href="#"><u>Loyola High School v Quebec (Attorney General), 2015 SCC 12</u></a>	32, 48
<a href="#"><u>MacKay v Manitoba, [1989] 2 SCR 357</u></a>	28
<i>McKenzie v Canadian Human Rights Commission</i> (1985), 33 ACWS (2d) 254 (FC)	23
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<a href="#"><u>Quebec (Attorney General) v 9147-0732 Québec inc., 2020 SCC 32</u></a>	40
<a href="#"><u>R v Big M Drug Mart Ltd., [1985] 1 SCR 295</u></a>	32
<a href="#"><u>R v Keegstra, [1990] 3 SCR 697</u></a>	65, 79
<a href="#"><u>R v Oakes, [1986] 1 SCR 103</u></a>	16, 53, 55-56
<a href="#"><u>Saskatchewan (Human Rights Commission) v Whatcott, 2013 SCC 11</u></a>	65
<a href="#"><u>Singh v Canada (Minister of Employment &amp; Immigration), [1985] 1 SCR 177</u></a>	26
<a href="#"><u>S.L. v Commission scolaire des Chênes, 2012 SCC 7</u></a>	46
<a href="#"><u>Syndicat Northcrest v Amselem, 2004 SCC 47</u></a>	46
<i>The Canadian Centre for Bio-Ethical v South Coast British Columbia Transportation Authority</i> , <a href="#"><u>2016 BCSC 1802</u></a> , aff'd <a href="#"><u>2018 BCCA 344</u></a>	26
<a href="#"><u>Thomson Newspapers Co v Canada (Attorney General), [1998] 1 SCR 877</u></a>	28
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<a href="#"><u>Ward v City of Vancouver, 2007 BCSC 3</u></a>	50

## Statutes

<a href="#"><u>Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 182</u></a> , c 11, ss. 2(a), 2(b), 2(d), 24	2-4, 11-12, 14-19, 22-32, 39-40, 43, 45, 50, 53, 59, 63-64, 80
<a href="#"><u>Community Charter, SBC 2003, c. 26</u></a> , s. 7	60
<a href="#"><u>Natural Products Marketing (B.C.) Act, RSBC 1996, c 330</u></a> , ss. 15 and 17	24
<a href="#"><u>Judicial Review Procedure Act, RSBC 1996, c 241</u></a> , s. 2	12-13, 29
<a href="#"><u>Supreme Court Civil Rules</u></a> , Rules 1-2(4), 1-2(5), 2-1(1)(1), 2-1(2)(b), 22-1(1), (4), (7), 22-2(12), 22-2(13)	14, 18, 21, 26, 36, 43-44