

Clerk's stamp:

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OF ALBERTA

JUDICIAL CENTRE

WETASKIWIN

APPLICANTS

CORNERSTONE CHRISTIAN ACADEMY SOCIETY

RESPONDENT

HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ALBERTA AS REPRESENTED BY THE
BATTLE RIVER SCHOOL DIVISION NO. 31

DOCUMENT

ORIGINATING APPLICATION

ADDRESS FOR
SERVICE AND
CONTACT INFORMATION
OF PARTY FILING
THIS DOCUMENT

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NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date:	April 17, 2018, or such time thereafter as determined.
Time:	10:00 AM
Where:	Law Courts, 4605 51 St., Wetaskiwin, AB T9A 1K7
Before:	Justice in Chambers

Go to the end of this document to see what you can do and when you must do it.

Remedy sought:

The Applicants apply to this Court for judicial review of the decision of the Battle River School Division (“BRSD”) to unilaterally terminate the Master Agreement as between the Cornerstone Christian Academy of Camrose (the “Society”) and BRSD (the “Master Agreement”), effected on June 29, 2017 and seek, *inter alia*:

1. An Order abridging the time for service of this Originating Application and supporting materials, if necessary;
2. A declaration that the decision made by BRSD on June 29, 2017 to terminate the Master Agreement (the “Decision”) is unreasonable, is a breach of the Master Agreement, was done in bad faith, is contrary to the *Canadian Charter of Rights and Freedoms* (the “Charter”), or is otherwise invalid;
3. An interim injunction prohibiting BRSD from winding down the operations of Cornerstone Christian Academy (“Cornerstone”) pending a determination of the constitutionality and administrative legality of the Decision;
4. A declaration that Cornerstone is in substantial compliance with the *School Act*, the *Alberta Human Rights Act* and all other pertinent legislation;
5. An Order that the emails between Alberta Education and the Minister of Education’s office and BRSD related to the Decision be produced as part of the record of proceedings in this matter;
6. A stay of the Decision pursuant to Rule 3.23 of the *Alberta Rules of Court* pending final determination of this Originating Application.
7. An Order in the nature of *certiorari* quashing the Decision;
8. A declaration that the Decision unjustifiably infringes s. 2(a) (freedom of religion), s. 2(d) (freedom of association) and s. 7 *Charter* rights of the Applicants;
9. In the alternative, an Order remitting the Decision back to BRSD to be reconsidered in accordance with the declarations of this Honourable Court and the rule of law;
10. Leave to file additional materials, such as affidavits of individuals negatively impacted by the Decision;
11. Costs; and
12. Such further and other relief as this Court deems just and equitable.

Grounds of Application

The Applicants

13. The Applicant, the Society, is a non-profit company incorporated in 1986 and registered and accredited to operate an “alternative program” school in the province of Alberta pursuant to section 21 of the *Alberta School Act*. The Society is responsible for implementing the Cornerstone Christian Academy School Vision and Purpose Document (the “Vision and Purpose Document”) at Cornerstone, which represents the school’s unique religious character by detailing the values, mission, and religious beliefs of the parents who associate to form the Society and chose to send their children to Cornerstone.
14. The Applicants, John Doe and Jane Doe, are parents of children who attend Cornerstone Christian Academy.

The Respondent

15. The Respondent, BRSD, is a public school division established pursuant to the *School Act*. The BRSD board of trustees is responsible for exercising the powers delegated by the *School Act* to implement the provisions of the *School Act*. As a body established by statute and exercising delegated government authority, BRSD is government in its nature and therefore bound by the *Charter*. Further, in implementing alternative programs pursuant to section 21 of the *School Act*, BRSD is implementing a government program and must do so in accordance with the *Charter*, including adherence to the duty of state neutrality as required by section 2(a) of the *Charter*.

Background

16. Cornerstone opened in the fall of 1986 and was managed by the Society as private school until 2009.
17. In 2009, the Society and BRSD agreed that Cornerstone would join BRSD as an alternative program. CCA and BRSD executed a Master Agreement to this effect in August 2009, and again in 2010 and 2015. The Master Agreement was prepared by counsel for BRSD, and states that Cornerstone would be a religious alternative program based on orthodox Christian beliefs and the Bible. The Master Agreement states:

The Board recognizes and supports the commitment of the Society in ensuring the availability of a program of studies for students whose parents desire **an educational setting which operates in accordance with the religious beliefs, core values, and educational philosophy of Cornerstone Christian Academy of Camrose and the Society.** [Emphasis added]

18. Section 21(1)(a) of the Alberta *School Act* states that alternative program schools are schools that “emphasize a particular language, culture, religion or subject-matter”. Alberta Education’s Alternative School Handbook states, “[a]lternative programs are about doing things differently and they involve working collaboratively within the vision and mission of a particular program.”¹ The Vision and Purpose Document is explicit regarding the religious beliefs, mission, and core values of Cornerstone. BRSD was at all material times very aware that Cornerstone is a Christian school founded on the Bible. BRSD was aware from the commencement of its relationship with the Society that Cornerstone was teaching and would teach Biblical sexuality, including that, *inter alia*:
- a) that God created people to be biologically male or female;
 - b) that God created human sexuality;
 - c) That sexuality is to be enjoyed by two people of the opposite sex (one male, one female) within a monogamous marriage relationship;
 - d) that marriage was created by God to the union of a man and a woman to the exclusion of all others, for life (the “Beliefs”).
19. At all times, BRSD was aware that the Beliefs are a part of Cornerstone’s religious character. Cornerstone gave no indication, and BRSD had no indication, that the Society would ever anticipate changing the Beliefs or substituting other beliefs contrary to the Bible in its operation of Cornerstone.
20. On July 1, 2015, the Master Agreement was renewed for a five-year term by BRSD and the Society.
21. In January 2017, the Society submitted a revised Vision and Purpose Document to BRSD. An oversight had left the Vision and Purpose document out of the revised Master Agreement in 2015. On January 30th, 2017, Imogene Walsh, BRSD Assistant Superintended of Business emailed the Society regarding the proposed Vision and

¹ https://education.alberta.ca/media/1626689/alternative_programs_handbook.pdf at p. 7.

Purpose Document stating that one of the many Scripture references in the Vision and Purpose Document, I Corinthians 6:9-11 (the “Verses”), must be removed. Ms. Walsh further stated in the email, “[b]ased on the position of the Minister of Education and Alberta Education, we do not support leaving this reference in the document”. BRSD referenced no provision of the Master Agreement for its purported requirement that the Society remove the reference to 1 Corinthians 6:9-11. No legislative provision was cited by BRSD to authorize the removal of the Verses. The Verses reflect Evangelical religious beliefs that BRSD was well aware are foundational to Cornerstone’s religious character.

22. BRSD’s request to remove the Verses was a profound interference with the religious character and religious freedoms of the Applicants, as well as the contractual agreement between the parties evidenced by the Master Agreement. The Society resisted the removal of the Verses.

The Request to Censor “Offensive” Scripture at Cornerstone

23. On April 24, 2017, representatives of BRSD, along with their legal counsel, met with representatives of the Society to address the inclusion of the Verses (the “April 24 Meeting”). At this meeting, Laurie Skori, then chair of BRSD Board of Trustees repeatedly stated that the Verses “go against the Alberta *School Act*, *Canadian Human Rights Act*, and our own BRSD policies.” Ms. Skori further stated the Verses put “us all” at risk for legal action.
24. On May 16, 2017, Ms. Skori emailed the Society, and stated:

What is of concern are **any actions, teachings or scripture that results in any student, staff member, parent or other stakeholder from being discriminated against based on any protected grounds**. For example, any teachings that denigrate or vilify someone’s sexual orientation, since that appears to be the focus, would not permit the school board to meet with its legal obligations[.] [Emphasis added]

25. On May 27, 2017, Ms. Skori further stated in an email to the Society:

“The original request from BRSD requested that you remove ... the Corinthians scripture from your vision document. In addition to this, **our lawyer indicated that any scripture that could be considered offensive to particular individuals should not be read or studied in school**. The above mentioned items are what is required by the CCA Board to be considered in compliance with with [*sic*] the

School Act and Human Rights Legislation as a member of a public school board.”
[Emphasis added]

26. Cornerstone initially objected to the removal of the Verses, but in an effort to Compromise with BRSD, and knowing that it was contractually understood that Cornerstone was a Biblical school (and the Bible contains the Verses), on June 7, 2017, the Society informed BRSD that the Scripture Reference would be removed. BRSD was not satisfied with the removal of the Verses. Ms. Skori wrote the same day in response to require Cornerstone to make a further concession: that it would not use **any** Scripture that “**could be considered inappropriate**”.
27. On June 8, counsel for the Society, the Justice Centre for Constitutional Freedoms (the “Justice Centre”) sent a letter to the BRSD Trustees explaining the Society’s contractual and constitutional rights, and that BRSD had no authority to censor the use of Scripture at Cornerstone. The letter set out that the request to censor the Verses was a violation of the *Charter* and BRSD’s duty of neutrality.
28. Later the same day, June 8, Ms. Skori confirmed receipt of the Justice Centre’s letter and stated that BRSD’s “position remains unchanged.” On June 9, the Society emailed Ms. Skori to confirm that Ms. Skori was speaking on behalf of the entire BRSD Board of Trustees, and Ms. Skori confirmed that “[a]s for the board’s position it remains the same” and that “the BRSD Board of Trustees will make a final decision.”
29. The Society did not understand what Ms. Skori meant by phrase, “make a final decision”. At no time prior to June 15, 2017 did BRSD indicate to the Society that it was considering terminating the Master Agreement.
30. On June 13, a news release was issued detailing some of the statements made by Ms. Skori and BRSD.
31. The BRSD Board met two days following the news release, June 15, and decided to establish a committee (the “BRSD Committee”) to engage in further discussions with the Society. It was revealed at the June 15 meeting that the BRSD board had been considering terminating the Master Agreement and had intended to vote regarding terminating the Master Agreement at the meeting, but decided not to.

32. On June 19, the BRSD Committee, Ms. Skori, Ms. Walsh and BRSD’s counsel met with members of the Society and its legal counsel. At the meeting, Ms. Skori and BRSD’s counsel asserted that “human rights” required that no “offensive” Scripture could be taught at Cornerstone. No specific legislative authority for this contention was offered. BRSD claimed that Cornerstone was in breach of legislation, but BRSD’s counsel refused to say what legislative provision was being infringed. Several BRSD trustees apologized to the Society for the irrational and unreasonable conduct of BRSD.
33. On June 22, 2017, BRSD issued a “clarification” statement to the public, claiming that “Cornerstone is a public school subject to the same rules and regulations as every other school”, and that BRSD had never suggested that it would “review scripture and decide which are appropriate and which are not”. The news release stated that BRSD did “not consider it to be our place to determine what is or is not offensive.”
34. Religious alternative schools such as Cornerstone are not, however, “subject to the same rules and regulations” as public schools that are not alternative programs. Cornerstone is protected by the *Charter*. Cornerstone’s operation within a public school division does not negate the constitutional protection for Cornerstone’s religious freedoms, or negate the religious freedoms of parents, which are infringed by the actions of BRSD.
35. On June 23, the BRSD Committee and the Society met again. BRSD presented the Society with a punitive proposed addendum to the Master Agreement (the “Addendum”). The Addendum required:
 - the Society to cease from communicating with Cornerstone teachers and staff (including the principal) without the prior permission of BRSD;
 - the Society from discussing any requirements that BRSD imposes on the Society with Cornerstone parents, such as the demand in May 2017 to censor Scripture at Cornerstone; and
 - the Society and the Society’s counsel (which is a third party to the Addendum) to remove all information on the internet that details BRSD’s actions.
36. At this meeting, Ms. Skori yelled at members of the Society, threatened to sue them individually and corporately, called them names, and pounded the conference table with her fist. Ms. Skori was eventually compelled to leave the room due to her emotional state.

37. On June 27, the Society emailed BRSD to explain why the Society could not agree to the Addendum as it prevented Cornerstone from being accountable to parents.
38. On June 27, a BRSD board member, Vice Chair Lorrie Sitler, published a letter to the editor in the Camrose Booster asserting that it was, and never would be, BRSD's intention to control the religious nature of Cornerstone. The letter denied that BRSD had made determinations as to which Bible verses are appropriate, or not. The letter asserted that BRSD was aware that its place was not to determine what is or is not, "offensive", and that its role was not to "direct any part of the education program, including the Christian focus."

Decision

39. On June 29, BRSD passed a motion to terminate the Master Agreement. BRSD claimed that the Decision was justified because Cornerstone's education programming was non-compliant with Board policies and provincial legislation, including the *Alberta Human Rights Act* and the *School Act*. BRSD released a public statement the same day communicating the Decision.
40. In making the Decision, BRSD has not once contended that the academic qualifications of Cornerstone are deficient.

Clause 11.2.2 of the Master Agreement

41. Clause 11.2.2 of the Master Agreement states:

This Agreement may be terminated at any time by mutual consent. If there is not mutual consent, the party wishing to terminate shall provide 365 days' written notice, provided that such notice is effective on June 30 of the following school year. **Both parties agree that decisions and actions surrounding termination will be based on what is in the best interests** of students and will be carried out with a focus on student well-being. Both parties will do their best not to terminate the Agreement in mid school year. [Emphasis Added]
42. BRSD claims that the decision to terminate the Master Agreement was made "based on what is in the best interests of students". This assertion is entirely self-serving, and without merit. BRSD's conflict with Cornerstone is ideological, grounded in prejudice and anti-religious discrimination due to Cornerstone's views on marriage, sexuality and gender, and was not based on evidence or legislative authority.

43. No evidence of student harm was produced by BRSD. Cornerstone has always been a Christian school that primarily serves a religious community. Neither Cornerstone nor the Society had changed since the inception of the Master Agreement. BRSD entered into the Master agreement with the Society knowing and agreeing that Cornerstone would be operated as a Christian school based on the Bible. BRSD was aware from the commencement of its relationship with the Society that the Society intended to continue teaching Christian Biblical doctrine in regard to marriage, sexuality, and gender.
44. BRSD has provided no explanation as to how the teaching of the Bible at a Bible-based Christian school is not in the best interests of students. BRSD has failed to consider the rights of parents and students in those parents and students' pursuit of a Christian education, inclusive of Biblical teachings on marriage, sexuality and gender. The Decision is not in accordance with Clause 11.2.2 of the Master Agreement.

BRSD is Subject to Public Law

45. The Decision is subject to judicial review. The Decision must comply with the rule of law, including the public law principles that require public decision-makers to act fairly and reasonably and not in bad faith, and to exercise their discretion in accordance with proper principles, including the fundamental values of Canadian Society and *Charter* values.
46. The Respondent is subject to the rule of law. BRSD does not have “absolute and untrammelled discretion”, nor has it been granted unlimited arbitrary or capricious power by statutory authority: *Roncarelli v. Duplessis*, [1959] SCR 121. It is further bound in this case by the contractual provision in the Master Agreement that the decision to terminate must be made based on the best interests of students.

The Duty of Good Faith

47. The Respondent owes the Applicants the public legal duty to deal with them in good faith. A decision maker is not entitled to deference when it exercises its discretion unreasonably or in bad faith. This includes, *inter alia*, a duty to be honest and to refrain from acting in a seriously careless or reckless manner: *McCulloch Finney c. Barreau (Québec)*, 2004 SCC 36, at para. 39.

Fundamental Canadian Values, Charter values

34. BRSD is required to exercise its statutory discretion in accordance with the fundamental values of Canadian Society and the principles of the *Charter*, both of which include the protection of the section 7 and section 2 rights of the parents, students and staff of Cornerstone. BRSD has failed to exercise its discretion in accordance with the *Charter*, *inter alia*, by:
- a. Basing the Decision, not on the rule of law, or academic qualification but on ideological prejudice and discrimination against the Applicants' adherence to Biblical views on marriage, sexuality and gender, which is a breach of BRSD's duty to be neutral;
 - b. Purporting to censor portions of the Bible on a vague and arbitrary standard of "offensiveness", while providing neither legislative nor definitory criteria for what constitutes "offensive", and not having the legal authority to do so in any event;
 - c. Interfering with the right of the Parents to raise their children with a Biblical understanding of marriage, sexuality and gender, which is contrary to the section 7 of the *Charter*, contrary to section 26(3) of the *Universal Declaration of Human Rights*, and in violation of Article 18 of the *International Covenant on Civil and Political Rights*, the latter two of which Canada is a party;
 - d. Infringing the *Charter* right of freedom of religion for the purposes of education, contrary to s. 2(a) of the *Charter*; and
 - e. Infringing the *Charter* right of freedom of association for the purposes of education, contrary to s. 2(d) of the *Charter*.

Evidence to be used in support of this application

35. The Affidavits of _____
36. The Record of Proceedings of the Decision as outlined herein.
37. Such further and other material as counsel may advise and this Honourable Court will permit.

Applicable Acts and Regulations

38. The *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.
39. *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*.
40. *Alberta Judicature Act*, RSA 2000, c J-2.
41. The *Alberta School Act*, RSA 2000, c S-3.
42. The *Alberta Rules of Court*, in particular Rules 3.15, 3.23, 3.24, and such other Rules as may be applicable.
43. Such further and other material as counsel may advise and this Honourable Court will permit.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).