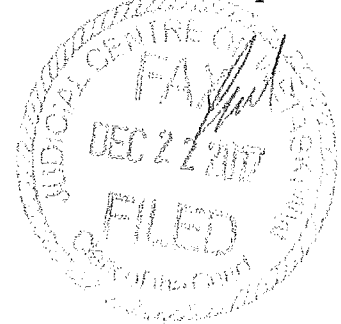


Clerk's stamp:



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COURT

COURT OF QUEEN'S BENCH
OF ALBERTA

JUDICIAL CENTRE

WETASKIWIN

APPLICANT

CORNERSTONE CHRISTIAN ACADEMY OF
CAMROSE, TAMMY LOEWEN, ARRON PETERSON,
and STEVE KOZMENIUK

RESPONDENT

THE DATTLE RIVER SCHOOL DIVISION NO. 31

DOCUMENT

ORIGINALING APPLICATION

ADDRESS FOR
SERVICE AND
CONTACT INFORMATION
OF PARTY FILING
THIS DOCUMENTJay Cameron
Justice Centre for Constitutional Freedoms
#253, 7620 Elbow Drive SW
Calgary, Alberta T2V 1K2
Phone: (403) 909-3404
Fax: (587) 747-5310- 3510
Email: jcameron@jccf.ca

~~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: March 20, 2018, or such time thereafter as determined.

Time: 10:00 AM

Where: Law Courts
4605 51 Street
Wetaskiwin, AB T9A 1K7

~~Notice to the Applicant~~

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

Clerk's stamp:

COURT FILE NUMBER

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Before: Justice in Chambers

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Remedy Sought

1. The Applicants, Cornerstone Christian Academy of Camrose (the “Society”), Tammy Loewen, Arron Peterson, and Steve Kozmeniuk apply to this Honourable Court for judicial review of the decision of the Battle River School Division No. 31 (“BRSD”) on June 29, 2017, to unilaterally terminate the Master Agreement between the Society and BRSD (the “Master Agreement”) and seek, *inter alia*:
2. An Order abridging the time for service of this Originating Application and supporting materials, if necessary;
3. 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;
4. 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;
5. A declaration that Cornerstone is in substantial compliance with the *Alberta School Act*, the *Alberta Human Rights Act* and all other pertinent legislation;
6. An Order that all emails related to the Decision between Alberta Education and the Minister of Education’s office and BRSD, be produced as part of the record of proceedings in this matter;
7. A stay of the Decision pursuant to Rule 3.23 of the *Alberta Rules of Court*, pending final determination of this Originating Application.
8. An Order in the nature of *certiorari* quashing the Decision;
9. A declaration that the Decision infringes *Charter* s. 2(a) (freedom of conscience and religion), *Charter* s. 2(b) (freedom of thought, opinion and expression), and *Charter* s. 2(d) (freedom of association) of the Applicants, and that the infringements are not justified under section 1 of the *Charter*;
10. 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;
11. Leave to file additional materials, such as affidavits of other individuals negatively impacted by the Decision;

12. Leave to anonymize the initials of the supporting Affidavit of A.B., a child currently attending Cornerstone, and/or otherwise prevent disclosure of the minor's identity;
13. Leave to amend this Originating Application, if necessary;
14. Costs; and
15. Such further and other relief as this Court deems just and equitable.

Grounds of Application

The Applicants

16. The Society is a non-profit company incorporated in 1986 and was registered and accredited to operate Cornerstone Christian Academy ("Cornerstone"), 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") which references the school's unique religious character. The Vision and Purpose Document also recognizes the values, mission, and religious beliefs of the parents who associate to form the Society and chose to send their children to a Christian school operated by the Society.
17. The Applicants, Tammy Loewen, Arron Peterson, and Steve Kozmeniuk are parents of children who currently attend Cornerstone.

The Respondent

18. The Respondent, Battle Rivers School Division No. 31, 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 is bound by the *Charter* and constitutionally required to make all of its decisions consistent with the rights and freedoms guaranteed 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

19. Cornerstone opened in the fall of 1986 and was managed solely and independently by the Society as a private Christian school until 2009.
20. In 2009, the Applicant and BRSD agreed that Cornerstone would begin operating as an alternative program, with the support of BRSD. The Applicant and BRSD executed Master Agreements to this effect in August 2009, and again in 2010 and 2015. The Master Agreements were prepared by counsel for BRSD, and state that Cornerstone would be a religious alternative program based on orthodox Christian beliefs and the Bible. The Master Agreement states, *inter alia*:

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]

21. 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” [emphasis added]. 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 the Applicant and the foundation for Cornerstone. BRSD was, at all material times, aware that Cornerstone is a Christian school founded on the Bible, and aware of the religious beliefs of the Society and its members. BRSD was aware from the commencement of its relationship with the Society that Cornerstone was teaching and would teach about sexuality, marriage and gender from a Biblical and Christian perspective, including that, *inter alia*:

- a) God created people to be biologically male or female;
- b) God created human sexuality;
- c) Sexuality is to be enjoyed by two people of the opposite sex (one male, one female) within a monogamous marriage relationship;

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

d) Marriage was created by God to be the union of a man and a woman to the exclusion of all others, for life

(together the “Religious Beliefs”).

22. At all times, BRSD was aware that the Society and its members adhere to the Religious Beliefs, and that the Religious Beliefs are foundational to the Society’s and Cornerstone’s religious character. The members of the Society associate together for the purpose of manifesting their shared Christian beliefs and practices, including the Religious Beliefs. Parents and students attend Cornerstone specifically because of their shared Christian beliefs and practices, including the Religious Beliefs. Parents, including the Applicant parents herein, send their children to Cornerstone so that Cornerstone will teach their children from a Biblical perspective, including the teaching of the Religious Beliefs. At no time did the Society give any indication, and BRSD had no indication, that the Society would change, or ever anticipate changing the Religious Beliefs, or substituting other beliefs contrary to the Bible, in its operation of Cornerstone.
23. The Society’s Christian beliefs, including the Religious Beliefs, have always been part of the Vision and Purpose Document.
24. On July 1, 2015, the Master Agreement was renewed for a five-year term by BRSD and the Society.
25. 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, even though it had been included in each prior version of the Master Agreements.
26. On January 30th, 2017, Imogene Walsh, BRSD Assistant Superintended of Business emailed the Applicant regarding the proposed Vision and 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”.

27. BRSD referenced no provision of the Master Agreement for its 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 aware are foundational to the Applicants' and Cornerstone's religious character, including the Religious Beliefs.
28. BRSD's request to remove the Verses was a profound interference with the religious character of Cornerstone, and a violation of the freedoms of religion, expression, and association of the Society, its members, parents and students. It was also a breach of the Master Agreement. The Society resisted the removal of the Verses.

The Request to Censor "Offensive" Scripture at Cornerstone

29. 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 claimed the Verses put "us all" at risk for legal action.
30. 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[.]
31. 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 [*sic*] 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]
32. The Society objected to the removal of the Verses from the Vision and Purpose Document. After BRSD exerted considerable pressure on the Society, the Society believed that the Master Agreement might be wrongfully placed in jeopardy by BRSD. The Society

therefore reluctantly acquiesced to the wrongful demands of BRSD on July 7, 2017. The Society did so believing that, in any event, it was contractually understood pursuant to the Master Agreement and pursuant to provincial legislation that Cornerstone is a Biblical school, and that the Bible includes the Verses.

33. Despite this, BRSD was not satisfied with the removal of the Verses from the Vision and Purpose Document. BRSD wrote the same day, July 7, demanding that the Society make a further concession: that it would not use **any** Scripture that “**could be considered inappropriate**”. [emphasis added]
34. On June 8, 2017, legal counsel for the Society sent a letter to BRSD explaining the Society’s contractual and constitutional rights, and reminded BRSD that it had no authority to censor or prohibit the use of Scripture at Cornerstone, particularly in light of the fact that Cornerstone is a Christian school. The letter set out that the demand to censor and prohibit the Verses (or other Biblical passages) was a violation of the *Charter*, including BRSD’s duty of state neutrality under s.2(a) of the *Charter*.
35. Later the same day, June 8, 2017 Ms. Skori confirmed receipt of the Society’s legal counsel’s letter and stated that BRSD’s “position remains unchanged.”
36. On June 9, the Society emailed Ms. Skori to inquire whether 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.”
37. The Society did not understand what Ms. Skori meant by the 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.
38. On June 13, 2017, the public, including parents and other stakeholders, were informed as to the existence and nature of BRSD’s demand. The BRSD Board of Trustees met two days later, and decided to establish a committee (the “BRSD Committee”) to engage in further discussions with the Society. It was revealed at this June 15 meeting that the BRSD Board of Trustees had been considering terminating the Master Agreement, and had intended to vote to terminate the Master Agreement on June 15. However, with the public

having been informed of the dispute, BRSD decided not to terminate the Master Agreement and instead established the BRSD Committee.

39. The BRSD Committee was not established in good faith or for a purpose other than further interfering with the religious beliefs and practice of the Applicant and its members, parents and students.
40. On June 19, the BRSD Committee, Ms. Skori, Ms. Walsh and BRSD's legal counsel met with members of the Society and its legal counsel. At the meeting, Ms. Skori and BRSD's legal counsel asserted that "human rights" required that no "offensive" Scripture could be taught at Cornerstone. BRSD claimed that the Society was in breach of Alberta legislation, but BRSD refused to say what legislative provision was being infringed. Several BRSD trustees subsequently apologized to the Society for the irrational and unreasonable conduct of BRSD.
41. 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."
42. Religious alternative schools such as Cornerstone are not, however, "subject to the same rules and regulations" as public schools that are not alternative programs. The Society and Cornerstone, and their members, parents and students are protected by the *Charter*, and have freedom of conscience and religion under section 2(a), freedom of thought, opinion and expression under section 2(b), and freedom of association under section 2(d).
43. The Society's operation of Cornerstone as a religious alternative school within a public school division does not negate the constitutional protection for these fundamental freedoms under the *Charter*, which are infringed by the actions of BRSD.
44. On June 23, the BRSD Committee and the Society met again. At this meeting BRSD presented the Society with a proposed addendum to the Master Agreement (the "Addendum") that would prohibit communications with parents and other members of the public. The Addendum required that:

- a) the Society cease from communicating with Cornerstone teachers and staff (including the principal) without the prior permission of BRSD;
 - b) the Society not discuss any requirements that BRSD imposes on the Society with Cornerstone parents, such as the demand in May 2017 to censor Scripture at Cornerstone; and
 - c) the Society and its legal counsel remove all information from the internet that detailed BRSD's actions as referenced herein.
45. At this meeting, Ms. Skori yelled at members of the Society, threatened to sue them individually and corporately, made unfounded personal accusations, and pounded the conference table. Ms. Skori was eventually compelled to leave the room due to her emotional state.
46. On June 27, the Society emailed BRSD to explain that it was accountable to parents for the religious nature of Cornerstone, and could not agree to be gagged and censored by the Addendum.
47. On June 27, the Camrose Booster published a letter by BRSD board member, Vice Chair Lorrie Sitler, asserting that it was not, 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.
48. 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" of Cornerstone. These statements were not true, based on the facts as set out herein.

Decision

49. On June 29, BRSD passed a motion to terminate the Master Agreement. BRSD claimed that the Decision was justified because the Society's education programming at Cornerstone 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, and communicated the Decision to the media.

50. BRSD has never suggested that the academic program at Cornerstone or the academic qualifications of its students or graduates are deficient in any way.

Clause 11.2.2 of the Master Agreement

51. 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]

52. 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 incorrect, self-serving, without merit and is a deliberate misrepresentation.
53. BRSD’s actions in terminating the Master Agreement are based entirely on its disagreement, and prejudice, regarding the religious beliefs and practices of the Applicants, in particular BRSD’s disagreement with the Religious Beliefs and the Verses and other Biblical passages and teachings that may be communicated within Cornerstone.
54. No evidence of student harm has been brought forward or explained 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, and twice renewed it for further five-year terms, 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 Cornerstone intended to continue teaching the Religious Beliefs regarding marriage, sexuality, and gender.
55. 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.
56. BRSD has failed to consider, and failed to safeguard and protect, the *Charter* rights of: 1) all members of the Society, including parents, students, staff and faculty at Cornerstone, to associate together for the common pursuit and manifestation of shared religious beliefs

and practices under sections 2(a), 2(b) and 2(d) of the *Charter*; 2) parents to impart religious teachings to their children through Christian education provided at Cornerstone under section 2(a) of the *Charter*; 3) all members of the Society, including members, staff, faculty, parents and students, to establish a religious educational community at Cornerstone under sections 2(a), 2(b) and 2(d) of the *Charter*.

57. The “best interests of students” includes the protection and preservation of their and their parents’ constitutional rights and freedoms as guaranteed by the *Charter*.
58. Further, the Decision is contrary to the goals and purpose of the *School Act*, which expressly authorizes alternative programs which are different from what typical public schools provide.

BRSD is Subject to Public Law

59. 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 rights and freedoms guaranteed by the *Charter*.
60. The Respondent is subject to the rule of law. BRSD does not have “absolute and untrammelled discretion,” nor does it have unlimited arbitrary or capricious power by statutory authority: *Roncarelli v. Duplessis*, [1959] SCR 121. BRSD 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

61. The Respondent owes the Applicants and the members of the Society’s community 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.

No Statutory Authority

62. BRSD is a statutory delegate pursuant to the *School Act*, and may only exercise the authority granted by the *School Act*, to the extent that the *School Act* does not conflict with the *Charter* or with the *Alberta Bill of Rights*. No authority is bestowed upon BRSD, under the *School Act* or any other legislation which authorizes BRSD to discriminate against the Society on the basis of its religious beliefs. BRSD has no statutory authority to terminate an alternative program out of prejudice and ideological bias, or improperly use the Master Agreement as a pretense thereto.

Failure to respect the Canadian Charter of Rights and Freedoms

63. BRSD is required to exercise its statutory discretion reasonably and in good faith, in accordance with the purpose of the relevant provisions of the *School Act* that facilitate diversity in educational programming. BRSD must preserve and protect the rights and freedoms of the Society and members of the Cornerstone community under the *Charter*, including the protection of the section 2 rights of the members, parents, students and staff of the Society and Cornerstone. BRSD's Decision violates the *Charter*, *inter alia*, by:
- a. Basing the Decision, not on the rule of law, or academic performance or qualification, but on prejudice against or other disagreement with the Society's adherence to Biblical teachings on marriage, sexuality and gender, which is a breach of BRSD's duty to be neutral in matters of religion under section 2(a) of the *Charter*;
 - b. Purporting to censor portions of the Bible, including the Verses, using a vague, arbitrary, and ever-shifting 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 parents to raise their children with a Biblical understanding of marriage, sexuality and gender, which is contrary to sections 2(a), 2(b) and 2(d) 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*;

- d. Attempting to coerce and compel the Society's agreement to the Addendum, which would censor the Society's communications with parents and staff, interfere with democratic accountability vis-à-vis elected officials, and restrict the Society's internet postings, contrary to section 2(b) of the *Charter*;
- e. Infringing the *Charter* right of freedom of religion for all members of the Society's religious community as pleaded herein, including for the purposes of education and of manifesting belief, contrary to section 2(a) of the *Charter*; and
- f. Infringing the *Charter* right of freedom of thought, opinion and expression for all members of the Society's religious community as pleaded herein, including for the purposes of expressing and teaching the Religious Beliefs, contrary to section 2(b) of the *Charter*; and
- g. Infringing the *Charter* right of freedom of association for all members of the Society's religious community as pleaded herein, including for the purposes of associating and creating religious educational institutions, contrary to section 2(d) of the *Charter*

Evidence to be used in support of this application

- 59. The Affidavits of Deanna Margel, Tammy Loewen, Arron Peterson, Steve Kozmeniuk, Amy Lauber, A.B. (a minor child and current student at Cornerstone), and such further Affiants as counsel may advise.
- 60. The Record of Proceedings of the Decision as outlined herein, including emails between BRSD and the Education Ministry, between BRSD and the Education Minister's Office, and between the Education Ministry and the Education Minister's Office.
- 61. Such further and other material as counsel may advise and this Honourable Court will permit.

Applicable Acts and Regulations

- 62. 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.
- 63. *Universal Declaration of Human Rights*.
- 64. *International Covenant on Civil and Political Rights*.
- 65. *Alberta Judicature Act*, RSA 2000, c J-2.

66. *Alberta School Act*, RSA 2000, c S-3.
67. *Alberta Bill of Rights*, RSA 2000, c A-14.
68. *Alberta Rules of Court*, in particular Rules 3.15, 3.23, 3.24, and such other Rules as may be applicable.
69. 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).