



No. 209759
New Westminster Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE REDEEMED CHRISTIAN CHURCH OF GOD, BRITISH COLUMBIA

PETITIONER

AND:

CITY OF NEW WESTMINSTER

RESPONDENT

RESPONSE TO PETITION

Filed by: City of New Westminster (the “petition respondent”)

THIS IS A RESPONSE TO the petition filed 28 Dec 2018.

Part 1: ORDERS CONSENTED TO

The petition respondent consents to the granting of the orders set out in the following paragraphs of Part I of the petition: **none**.

Part 2: ORDERS OPPOSED

The petition respondent opposes the granting of the orders set out in paragraphs 1(a)-(c) of Part I of the petition.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The petition respondent takes no position on the granting of the orders set out in the following paragraphs of Part I of the petition: **none**.

Part 4: FACTUAL BASIS

The Parties

1. The petitioner, The Redeemed Christian Church of God, British Columbia, is a society under the *Societies Act*, SCB 2015, c. 18 with a registered office address at Suite 100, 60-8th Street New Westminster.
2. The petition respondent, The City of New Westminster, is a municipal corporation incorporated pursuant to the laws of British Columbia.
3. The petition respondent has an Official Community Plan, adopted by City Council October 2, 2017 which includes a vision of the City as a “caring and inclusive community”. As well, it has also established a Strategic Plan focused on striving toward “Vision New Westminster.” The vision is to build a vibrant waterfront City of choice that is known for social inclusion and equity.
4. The petition respondent owns and manages the Anvil Centre, a commercial and cultural hub in New Westminster.
5. With the opening of Anvil Centre in 2014, City Council adopted an “Anvil Centre Booking and Space Allocation Policy and Procedures” (the “**Policy**”) consistent with the petition respondent’s commercial purposes and also City Council’s vision of an inclusive City known for social equity.

The Contract

6. On or around December 20, 2017, the petitioner submitted an inquiry to the Anvil Centre about booking space for an “evening youth conference”. On December 22, 2017, Mary Kyritisis, Sales Manager at the Anvil Centre responded.
7. On or around May 15, 2018, Ronald Brown, on behalf of the petitioner, inquired into renting the Ballroom West of the Anvil Centre for an event on July 21, 2018 (“**Event**”). The Event was described as taking place from 10:00 AM-4:00 PM, with a theatre style set

up for 150 people. There was a possibility that a screen would be used and the petitioner would bring its own projector. There would be no food and beverage.

8. On May 17, 2018, Maria Tashkova, Coordinator Conference & Event Sales, Anvil Centre, sent a proposal to host the Event on behalf of Heidi Hughes, Director of Sales & Marketing, Anvil Centre. Ms. Tashkova indicated this was a “preliminary proposal, which we can revise once we are provided with more details”.
9. On May 17, 2018, without providing further details, Mr. Brown asked to reserve the space and to come in the following week to look at the room.
10. On May 18, 2018, Ms. Tashkova sent, among other things, a license agreement and event resume outlining the Event details.
11. On May 22, 2018, Ms. Tashkova showed Ronald Brown the space. Mr. Brown advised Ms. Tashkova that the petitioner was hosting a Youth Conference.
12. On or around May 28, 2018, Ms. Tashkova sent a revised license agreement with a 15% Non-Profit discount applied to the room rental (“**Agreement**”). No additional details about the nature of the Event had been provided. Nevertheless, the parties signed the Agreement.
13. The Agreement provides in part:

8) Premises

The Licensee covenants and agrees:

c) To observe and comply with, and cause its servants, agents, employees, licensees, invitees and attendees of the Event to observe and comply with, all rules, regulations and orders established from time to time by Anvil Centre.

...

g) Not to use or permit the Premises to be used for any performance, exhibition, entertainment or any other purpose which is illegal or which, in the reasonable opinion of Anvil Centre, is immoral, improper or may cause public disorder in or near the Premises.
14. The rules of the Anvil Centre include the Policy and Procedure in respect of the Anvil Centre (“**Policy**”) which provides in part:

The purpose of this policy is to identify allocation priorities for Anvil Centre Conference spaces to maximize use, generate revenue and to stimulate the local economy and attract visitors to New Westminster.

...

The objective of this policy is to:

1. Maximize revenue generation;
 2. Maximize use of conference spaces;
 3. Maximize use of all business units and programs;
 4. Act as a stimulus to the local economy;
 5. Enhance the profile of New Westminster as a desirable destination and to attract visitors;
- and
6. Support Civic operations and functions

...

Event bookings may be canceled, at any time, based on violations of the rental agreement, non-payment of fees, unexpected facility closures, changes in service delivery or unforeseen circumstances.

Additional terms and conditions requirements are outlined in Anvil Centre event booking agreements. In addition, all event booking user groups are required to attain \$5M insurance with the Corporation of the City of New Westminster named as additional insured on the policy. Proof of insurance is required to confirm the event booking.

User groups will be restricted or prohibited if they:

- 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;

- f) intend to conduct activities in City facilities that are incongruent with the Mission and Vision of Anvil Centre and the City of New Westminster;

...

15. The Mission and Vision of the City include social inclusion and equity.
16. The Anvil Centre's Mission Statement is to operate as a vibrant gathering place for residents and visitors, to inspire community spirit and pride, cultivate commerce, promote tourism, and foster learning and engagement through the celebration and discovery of arts, culture and heritage in our theatre, museums and archives, art gallery and studios together with the hosting of special events and conferences.

17. One example of the inclusive nature of the City and its ongoing work with a marginalized community is its current work to document oral histories and narratives from the lesbian, gay, bisexual, transgender, and queer (or questioning) (“**LGBTQ**”) community in New Westminster. This project is part of the ongoing work of the City’s Museums, Archives and Heritage Services, and pre-dates the booking and cancellation of the event described below. This work involves sitting down with local residents and interviewing them at the Anvil Centre in the archives reading room.

Cancellation of the Contract

18. On June 20, 2018, Anvil Centre staff were informed by a member of the public that the Event was an anti-LGBTQ event, that Kari Simpson was noted on the playbill as a facilitator for the event and that she is a very active anti-LGBTQ speaker and the face and voice behind Culture Guard, a well-known anti-LGBTQ group in the Lower Mainland. The playbill featured substantially similar branding to LGBTQ events, specifically, rainbow graphics, and the Event was titled “LGBT” for “Let God Be True”. The Event was open to the public.
19. On June 21, 2018, Ms. Hughes sought advice from Vali Marling, General Manager, and Blair Fryer, Communications and Economic Development Manager. They noted the graphics used to publicize the event were almost identical to LGBTQ branding. They researched Ms. Simpson’s online presence and noted her large profile on social media and recent Facebook posts that expressed anti-LGBTQ views.
20. They formed the view that the Event contravened the Agreement and the Policy. Specifically, they 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. They understood the Event 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 Event 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 Event was incongruent with the Mission and Vision of the City and the Anvil Centre, both of which value inclusivity.

21. Ms. Hughes then provided Lisa Spitale, Chief Administrative Officer, with their collective recommendation that the Event be cancelled and sought approval from Ms. Spitale to cancel the Event.
22. In giving her recommendation to cancel the Event, Ms. Hughes noted that the Event was free and open to the public. One of the speakers featured on the playbill was Ms. Simpson. Ms. Hughes noted that Ms. Simpson was the Founder of CultureGuard (an anti-LGBT group) and a well-known anti-LGBT activist. Ms. Hughes noted that Ms. Simpson's social media presence was quite extensive and she included some links to Ms. Simpson's social media posts.
23. Ms. Hughes further noted that Ms. Simpson is anti SOGI 123. SOGI 123 helps educators make schools inclusive and safe for students of all sexual orientations and gender identities (“**SOGI**”). At a SOGI-inclusive school, students' biological sex does not limit their interests and opportunities, and their sexual orientation and how they understand and express their gender are welcomed without discrimination. Ms. Hughes noted that the provincial government is on record defending SOGI 123 and its importance in BC schools.
24. Finally, Ms. Hughes noted terms in the Policy and Agreement and expressed the view that the Event would contravene both. The collective recommendation of Misses Hughes and Marling, and Mr. Fryer was that proceeding with the Event would contravene the Policy and the Agreement and their recommendation was immediate cancellation of the Event.
25. Ms. Spitale concurred with the recommendation (the “**Decision**”).
26. On June 21, 2018, Ms. Hughes informed Mr. Brown that the Anvil Centre was cancelling the booking and would immediately process a refund of the entire booking fee.
27. On the same day, Ms. Hughes provided Ms. Simpson with a copy of the Policy. She also referred Ms. Simpson to language in the Agreement.

28. On June 21, 2018, Mr. Brown requested that Ms. Hughes meet with him to discuss the matter further and to explain the petitioner's intentions.
29. On June 21, 2018, Ms. Hughes agreed to meet but noted that "that this does not change our decision and the event is cancelled".
30. However, no such further meeting occurred, as Mr. Brown did not respond to Ms. Hughes.
31. Instead, on or around July 6, 2018, Ms. Marling received a letter from James Kitchen, counsel for the petitioner. Mr. Kitchen did not seek further procedural redress. Instead, he requested that the Anvil Centre "adhere to its contractual and constitutional obligations" to permit the Event to proceed. The Anvil Centre did not respond to this legal correspondence.

Part 5: LEGAL BASIS

The Decision is Not Subject to Judicial Review

1. The Decision is not subject to judicial review.
2. Decisions of public bodies that are private in nature, such as renting premises and hiring staff, are not subject to judicial review.

Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall,
2018 SCC 26

New Brunswick (Board of Management) v Dunsmuir, 2008 SCC 9

DRL Vacations Ltd. v Halifax Port Authority, 2005 FC 860 (CanLII), [2006] 3 FCR 516

Peace Hills Trust Co. v Moccasin, 2005 FC 1364 (CanLII)

3. Relief is not available under s. 2(2)(b) of the *Judicial Review Procedure Act* ("**JRPA**") in this case. This provision only allows a court to grant relief in relation to the exercise of a statutory power. "Statutory power" is defined in the *JRPA* as "a power or right conferred by an enactment...". The petitioner has not identified any such enactment.
4. Relief is not available under s. 2(2)(a) of the *JRPA*. This provision does not confer jurisdiction to grant public law remedies in respect of private causes of action. Public law

remedies, such as those contained in s. 2(2)(a) of the *JRPA*, are only available where the decision-making power at issue has a “sufficiently public character”.

Highwood Congregation of Jehovah’s Witnesses (Judicial Committee) v Wall, 2018 SCC 26

Air Canada v Toronto Port Authority Et Al, 2011 FCA 347

Mohr v. Vancouver, New Westminster & Fraser Valley Dist. Council of Carpenters, 1988
CanLII 3189 (BCCA)

No Duty of Fairness Owed

5. The petition respondent owed the petitioner no duty of fairness in respect of this private, commercial decision.

New Brunswick (Board of Management) v Dunsmuir, 2008 SCC 9

Irving Shipbuilding Inc. v. Canada (Attorney General), 2009 FCA 116

In the alternative, Duty of Fairness Not Breached

6. In the alternative, any duty of fairness owed was minimal and was met in this case.
7. The content of the duty of fairness is highly context-dependent. The following (non-exhaustive) factors are considered in determining what the duty requires in a given case: (1) the nature of the decision being made and process followed in making it; (2) the nature of the statutory scheme and the terms of the statute pursuant to which the body operates; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; and (5) the choices of procedure made by the agency itself.

Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817

8. If there were any procedural shortcomings in this case, they were cured when Ms. Hughes agreed to meet with Mr. Brown to hear his views after the Decision was made. That invitation was not taken up by the petitioner. Instead, the petitioner sent legal correspondence concerning contractual rights.

Westbrook Construction Ltd. v. British Columbia Provincial Council of Carpenters, 1979
CanLII 350 (BCSC)

9. The reasons provided for the Decision were adequate. Given that reasons were provided, there was no breach of procedural fairness. Further, the reasons allow a reviewing court to understand why the petition respondent cancelled the booking and to determine whether that decision fell within the range of reasonable outcomes.

Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board),
2011 SCC 62

New Brunswick (Board of Management) v Dunsmuir, 2008 SCC 9

No Reasonable Apprehension of Bias

10. The rule against bias only applies to decision-makers who owe a duty of procedural fairness. Thus, the petitioner says no duty of impartiality arises in this case.
11. In the alternative, if any duty of impartiality arises, it was minimal and was met in this case.
12. The standard for establishing a reasonable apprehension of bias varies depending on the context and type of administrative decision at issue.
Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817
13. The standard for impartiality is higher for adjudicative or judicial decision-making than for administrative, policy-driven, or commercial decision-making.
14. A low standard for establishing a reasonable apprehension of bias applies in this case, given that the Decision was not adjudicative in nature and it concerned commercial matters.
15. Here, the petition respondent concluded that it was required to cancel the Event under the Agreement and Policy. The petition respondent did not cancel the Event due to stereotypes about Christian groups, but rather due to the very public, discriminatory views represented by one of the speakers. A well-informed member of the community would not conclude that the City was biased in this case.

Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817

Because the Proceeding is Improperly Constituted as a Petition, this Court lacks Jurisdiction to Adjudicate the *Charter* claims

16. Because the Decision is not subject to judicial review, and therefore the proceeding ought to have been constituted as an action, not a petition, this Court lacks jurisdiction to adjudicate the *Charter* claims.

No Standing to Advance Claims Under Sections 2(a) and 15 of the *Charter*

17. The petitioner lacks standing to assert s. 2(a) or s. 15 rights under the *Charter*.
18. Section 24(1) of the *Charter* states: “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.”
19. Section 24(1) only provides a remedy to an applicant whose *own Charter* rights have been infringed. Therefore, those rights that do not apply to a corporation cannot be invoked by a corporation to obtain a remedy under s. 24.
20. Corporations do not have the right to freedom of religion under s. 2(a) of the *Charter*.

R. v. Big M Drug Mart Ltd., [1985] 1 S.C.R. 295

Loyola High School v. Quebec (Attorney General), 2015 SCC 12, [2015] 1 S.C.R. 613

Law Society of British Columbia v. Trinity Western University, 2018 SCC 32

21. Corporations do not have the right to equality under s. 15 of the *Charter*.

Canada (Attorney General) v. Hislop, [2007] 1 S.C.R. 429

Surrey Credit Union v. Mendonca (1985) 67 B.C.L.R. 310 (SC)

R. v. Rockwood, 2007 NLCA 68

Smith, Kline & French Laboratories Ltd. v. Attorney General of Canada (1985), 7 C.P.R.

(3d) 145 (FC)

Further or in the Alternative, No Breach of Section 2(a)

22. There was no breach of s. 2(a) of the *Charter* in this case.

23. An infringement of section 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.

Law Society of British Columbia v. Trinity Western University, 2018 SCC 32

24. No allegation of a sincere belief with a nexus to religion has been made or substantiated in the pleadings or record.
25. Any interference with the ability to act in accordance with an alleged religious belief was trivial and insubstantial.

Further or in the Alternative, No Breach of Section 2(d)

26. There was no breach of s. 2(d) of the *Charter* in this case.
27. The mere fact that an impugned decision limits the possibility of associational activities is not sufficient to show a *prima facie* interference with s. 2(d) of the *Charter*.

R. v. Skinner, [1990] 1 S.C.R. 123

28. Further, s. 2(d) of the *Charter* is aimed at reducing social imbalances, not enhancing them. The type of associational activity at issue in this case falls outside the purview of s. 2(d) protection.

Mounted Police Association of Ontario v. Canada (Attorney General), 2015 SCC 1

Further or in the Alternative, No Breach of Section 15

29. There was no breach of s. 15 of the *Charter* in this case.
30. An infringement of section 15 of the *Charter* will be made out where:
- a. The claimant establishes that government action creates a distinction on an enumerated or analogous ground;

b. The distinction is discriminatory.

Centrale des syndicats du Québec v. Québec (Attorney General), [2018] 1 SCR 522,
2018 SCC 18

Alberta v. Hutterian Brethren of Wilson Colony, 2009 SCC 37

Law Society of British Columbia v. Trinity Western University, 2018 SCC 32

31. The Decision did not create a distinction on the basis of any enumerated or analogous ground.

32. The Decision did not deny a benefit in a manner that has the effect of reinforcing, perpetuating or exacerbating disadvantage.

In the Further Alternative, the Decision Was Reasonable

33. Discretionary administrative decisions are entitled to deference, even when these decisions implicate *Charter* rights or values.

New Brunswick (Board of Management) v. Dunsmuir, 2008 SCC 9

Doré v. Barreau du Québec, 2012 SCC 12, [2012] 1 S.C.R. 395

34. The Decision was reasonable because it reflected a proportionate balancing of any *Charter* rights that may have been at stake and the relevant statutory mandate.

Doré v. Barreau du Québec, [2012] 1 SCR 395, 2012 SCC 12

Loyola High School v. Québec (Attorney General), 2015 SCC 12, [2015] 1 S.C.R. 613

Law Society of British Columbia v. Trinity Western University, 2018 SCC 32

35. The Decision promoted the objectives of the Policy, Official Community Plan, and the *Community Charter*, SBC 2003, c. 26. By cancelling the Event, the petition respondent refused to condone discrimination against LGBTQ people and to provide a platform for the perpetuation of hateful stereotypes. The petition respondent protected ongoing use of the Anvil Centre by other users. The Decision was consistent with fostering well-being in the community and ensuring that the City remains an attractive and welcoming destination for visitors, regardless of their sexual orientation.

Law Society of British Columbia v. Trinity Western University, 2018 SCC 32

Community Charter, SBC 2003, c. 26, s. 7

36. To the extent that the Decision may have interfered with *Charter* rights, any such interference was minimal. The petitioner could have held the conference at a different venue. Attending the Event was not a required religious practice. Ms. Simpson perpetuates destructive and hateful stereotypes about LGBTQ people. Her speech undermines the values that underlie s. 2(b) of the *Charter* and thus does not warrant strong protection.

Doré v. Barreau du Québec, [2012] 1 SCR 395, 2012 SCC 12

Law Society of British Columbia v. Trinity Western University, 2018 SCC 32

R. v. Keegstra, [1990] 3 S.C.R. 697

Saskatchewan (Human Rights Commission) v. Whatcott, 2013 SCC 11

37. There was no need for the reasons for the Decision to explicitly reference any *Charter* rights or values that may have been implicated. In determining whether a decision is reasonable, the reviewing court can consider the reasons offered or which could have been offered.

Law Society of British Columbia v. Trinity Western University, 2018 SCC 32

Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations),
2017 SCC 54

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Vali Marling, dated XXX;
2. Affidavit #1 of Ronald Brown, sworn December 27, 2018;
3. *The Canadian Charter of Rights and Freedoms*;
4. *The Judicial Review Procedure Act*, RSBC 1996, c 241;
5. *The Community Charter*, SBC 2003, c 26; and
6. Such further and other material as counsel may advise and this court may allow.

The petition respondent estimates that the application will take one day.



Dated: 8 Feb 2019

Signature of lawyer for petition respondent
Alison M. Latimer

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