

**COURT OF APPEAL**

ON APPEAL FROM the Supreme Court of British Columbia from the Judgment of the  
Honourable Justice Saunders Pronounced the 16th day of December, 1998

BETWEEN:

**JAMES CHAMBERLAIN, MURRAY WARREN, DIANE WILLCOTT,**

**BLAINE COOK, by his Guardian Ad Litem SUE COOK, and**

**ROSAMUND ELWIN**

PETITIONERS  
(RESPONDENTS/APPELLANTS  
BY CROSS-APPEAL)

AND:

**THE BOARD OF TRUSTEES OF  
SCHOOL DISTRICT #36 (SURREY)**

RESPONDENT  
(APPELLANT/RESPONDENT  
BY CROSS-APPEAL)

AND:

**BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION**

INTERVENOR

AND:

**EGALE CANADA INC.**

INTERVENOR

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**FACTUM OF THE INTERVENOR,**

**BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION**

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## WHAT THIS APPEAL IS ABOUT

1. This Appeal results from a challenge to a resolution of the Surrey School Board (the “Board”) that prohibited the use of three books - Asha’s Mums, Belinda’s Bouquet, and One Dad, Two Dads, Brown Dad, Blue Dads (the “Three Books”) - in the Personal Planning K to 7 curriculum for the Surrey public school system (the “Book Ban Resolution”). The impugned resolution was made on the basis that the use of the Three Books would offend the religious sensibilities of some of the trustees of the Board and the electors who elected the trustees by depicting same-sex family models that certain religions find abhorrent or unacceptable.
2. The Learned Chambers Judge ruled that the Board exceeded the authority vested in it by the *School Act*, 14 R.S.B.C. 1996, c. 412 because it passed the Book Ban Resolution for reasons that were not “strictly secular,” as mandated by s. 76, but rather were religious in character. The Learned Chambers Judge ruled that the Board’s actions were *ultra vires*.
3. The Board appeals on the basis that the *School Act* permits it to establish a curriculum that reflects the religious sensitivities of electors within the District, as long as no particular religious view is taught. The Board argues that such consideration respects the constitutional rights of parents to teach their children according to their own religious beliefs and is secular, not religious, in nature.
4. The appeal on this issue will determine whether the Appellant is correct in arguing that:
  - a) the *School Act* permits the religious views of a segment of the electorate to dictate the curriculum to which all students will be exposed in the publicly-funded education system, and
  - b) the *School Act* permits the standard and nature of education to vary from district to district based on the perception of elected trustees concerning the religious preferences of their electorate. This Intervenor will argue to the contrary that the *School Act* requires that a uniformly secular approach be taken with regard to publicly-funded education, and that the curriculum in public schools must not be motivated by religious concerns.

### PART 1 STATEMENT OF FACTS

5. In response to paragraphs 7, 9, and 86-94 of the Appellant’s Factum, the Three Books depict same-sex couples/parents in a value-positive manner. The Learned Chambers Judge made no finding that the Three Books advocated or promoted same-sex relationships or homosexuality. The Learned Chambers Judge expressly rejected the notion that the books raised questions of sexuality or sexual practices.  
**Reasons for Judgment (“R.J”), para. 96;**  
**Appeal Book (“A.B.”), Vol. XXIV, p. 4543**
6. The evidence does not support the conclusion that Mr. Chamberlain intended to use the Three Books for the purpose of teaching about sexual orientation or sexual practices. Dr. Renihan, the Superintendent of Schools for Surrey, described the message conveyed in the Three Books in the following way:

“...that there are alternative family models, that these family models include models with same-sex parents, that these ought to be valued in the same way as other family models, that they are peopled by caring, thoughtful, intelligent, loving people who do give the same warmth and love and respect that other families do.”

**A.B., Vol. I, p. 53, Vol. II, pp. 313-339**

**A.B., Vol. XXIV, p. 4489**

**A.B., Vol. I, pp. 58-9**

7. The Learned Chambers Judge found this to be an accurate description, namely that the Three Books communicate the message that same-sex parents can provide loving, supportive family environments for children.  
**R.J., para 98;**  
**A.B., Vol. XXIV pp. 4543**
8. In response to paragraph 14 of the Appellant’s Factum, the Integrated Resource Package for the Personal Planning K to 7 curriculum does not state that resources dealing with same-sex relationships are not appropriate for primary students. The Ministry has confirmed on two occasions (October, 1996, and February, 1997) that the Personal Planning curriculum addresses many issues related to interpersonal relationships and allows a teacher to address issues of sexual orientation in the classroom environment. Having said that, the Three Books banned in this case dealt only with the existence of same-sex parents, not sexual orientation or sexual practices.  
**A.B., Vol. I, p. 49**  
**A.B., Vol V, p. 873**
9. In response to paragraphs 28-9 of the Appellant’s Factum, the Learned Chambers Judge held that the GALE Resolution was *ultra vires* on three grounds:
  - (a) The *School Act* did not authorize the Board to approve (or not) the GALE Resources, which were professional resource materials used for teachers’ reference. The Board’s jurisdiction was limited to material used in the curriculum to teach students.
  - (b) The GALE Resolution was unclear. It caused the removal of the Three Books from library shelves. As well, a counsellor’s handbook, poster and pamphlet were no longer available for use in the school district.
  - (c) The Board failed to properly consider the nature of the GALE Resources before passing its resolution, and thus failed to exercise its discretion in accordance with proper principles.  
**R.J., paras. 59-60**  
**A.B. Vol. XXIV, pp. 4526-8**
10. The Chambers Judge implicitly rejected the Board’s contention that “it simply intended to inform the community that such learning resources had not been approved.” The GALE Resolution had practical consequences that the Board either intended or supported. This is evidenced by the fact that the Board refused to rescind the GALE Resolution even after admitting that resources for teachers’ reference did not require approval.

**A.B., Vol I, p. 65-7**

**A.B. Vol. III, p. 538**

11. In response to paragraph 34 of the Appellant's Factum, the Learned Chambers Judge found that the trustees who voted in support of the Book Ban Resolution were motivated to a significant degree by the concern that parents and others in the Surrey school district would consider the books incompatible or inconsistent with their religious views on the subject of same-sex relationships. The Learned Chambers Judge found that at least one trustee was motivated by personal religious considerations on the issue of homosexuality.

**R.J., para. 94**

**A.B. Vol. XXIV, p. 4542**

## **PART 2 ISSUES**

(a) Did the Learned Judge misinterpret and incorrectly apply subsection 76(1) of the *School Act*?

(b) Did the Learned Judge misdirect herself concerning the appropriate standard of review applicable to a school board when considering learning resources for approval?

(c) Did the Learned Judge err by ignoring relevant and conclusive evidence and drawing erroneous conclusions from the evidence with respect to the issues raised by the Three Books and the effect of using the Three Books as instructional learning resources in Kindergarten and Grade One classrooms?

## **PART 3 ARGUMENT**

(d) Did the Learned Judge misinterpret and incorrectly apply subsection 76(1) of the *School Act*?

12. The Learned Chambers Judge concluded that that the Board exceeded its authority under the *School Act*, in particular s. 76(1) thereof, when it passed the Book Ban Resolution in deference to the religious sensitivities of its trustees and/or of parents within the district. To determine if her conclusion was correct, regard must be had to general principles of statutory interpretation and the specific wording of the Act.

### **GENERAL PRINCIPLES**

13. The Board must exercise its statutory discretion for purposes that are set out, expressly or by implication, in the *School Act*. Any doubt about whether the exercise of the Board's power is consistent with these purposes is to be resolved against the Board.

**Shell Canada Products Ltd. v. Vancouver (City),**

**[1994] 1 S.C.R. 231 at 275-77**

14. The purposes of the *School Act* are determined in light of the following factors:  
(a) its plain language;

- (b) the values underlying the *Canadian Charter of Rights and Freedoms* (“*Charter*”); and  
(c) the *Human Rights Code*, R.S.B.C. 1996, c. 210 (the “*Code*”)

### **PLAIN LANGUAGE OF THE *SCHOOL ACT***

15. Our schools play a central role in establishing the democratic foundations of B.C. society. Inculcation of the principal values of tolerance, independent thought and responsible choice in children is an essential element of developing a citizenry capable of exercising a democratic mandate. Education is, in the words of the U.S. Supreme Court in *Brown v. Board of Education of Topeka*, “the very foundation of good citizenship.”  
***Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954) at 493; cited in R. v. Jones, [1986] 2 S.C.R. 284 at 297**
16. The preamble of the *School Act* bears this out, stating that “the purpose of the British Columbia school system is to enable all learners to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy, democratic and pluralistic society...”
17. Schools are, in the words of La Forest J. in *Ross v. School District No. 15*, “an arena for the exchange of ideas” and must foster a positive environment in which all persons feel equally free to participate. His words echo the theme expressed in the preamble to the *School Act* quoted above.

“A school is a communication centre for a whole range of values and aspirations of a society. In large part, it defines the values that transcend society through the educational medium. The school is an arena for the exchange of ideas and must, therefore, be premised upon principles of tolerance and impartiality so that all persons within the school environment feel equally free to participate. As the Board of Inquiry stated, a school has a duty to maintain a positive school environment for all persons served by it.”  
***Ross v. School District No. 15*, [1996] 1 S.C.R. 825 at 856-7**

18. Section 76(1) of the *School Act* provides that all schools must be “conducted on strictly secular and non-sectarian principles”, and s. 76(2) stipulates that “no religious dogma or creed is to be taught...”  
***School Act*, s. 76(1), (2)**
19. In determining the intent of the legislature in relation to s. 76(1), one must give the words “strictly” and “secular” their usual and ordinary sense having regard to their context and the purposes of the *School Act*.  
***(Attorney General) v. Mossop*, [1993] 1 S.C.R. 554**
20. The *Oxford English Dictionary* defines the word “secular” in this way:

“Belonging to the world and its affairs as distinguished from the church and religion; civil, lay, temporal. Chiefly used as a negative term, with the meaning non-ecclesiastical, non-religion, or non-sacred. ... Of education, instruction; Relating to non-religious subjects. (In modern use often implying the exclusion of religious teaching from education, or from the education provided at the public expense.) Of a school: That gives secular education.”

21. The term “strictly” is defined as follows: “With reference to commands, obligation, etc.: Rigorously, stringently; with insistence on exact performance, execution, or obedience.”
22. The verb “conduct” is defined as meaning “to direct, manage, carry (a transaction, process, business, institution, legal case etc.).”
23. Applying these definitions and keeping in mind the need for schools to foster a tolerant and inclusive environment, it is clear that the plain language of s. 76(1) requires that schools in British Columbia not be “conducted” according to religious principles on any issue, including the determination of the curriculum. The Learned Chambers Judge’s determination that the impugned resolution was significantly motivated by religious considerations was a determination that the Board had failed to “conduct” the schools on a “strictly secular” basis as required by the *School Act*.
24. In excluding the Three Books from the curriculum on the basis that they offend the religious views of parents (and some of its trustees), the Board implicitly sent the message to students that certain beliefs are to be valued over others for religious reasons. This effectively permitted the indirect teaching of religious dogma that could not otherwise be taught directly (i.e., same-sex families violate religious principles).

### **CHARTER VALUES**

25. The Supreme Court of Canada in *Hills v. A.G. (Canada)* has ruled that legislation must be interpreted in a manner that is consistent with *Charter* values. *Cooper v. Canada (H.R.C.)*, [1996] 3 S.C.R. 854 at 877 See also *Hills v. A.G. (Canada)*, [1988] 1 S.C.R. 512 at 558
26. Dickson J. (as he then was) stated in *R. v. Big M Drug Mart* that the values underlying s. 2(a) of the *Charter* include the absence of coercion from the State, and the right to be free from whatever one segment of the population (even a majority segment) may, for religious reasons, try to impose through the State on others:

“Freedom can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the State or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free.

What may appear good and true to a majoritarian religious group, or the State acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view. The *Charter* safeguards religious minorities from the threat of “the tyranny of the majority”.

**R. v. Big M Drug Mart, [1985] 1 S.C.R. 295 at 336, 346**

27. The object of s. 15(1), as expressed by Cory J. in *Egan v. Canada*, is to prevent discrimination and to promote a society in which all persons are secure in the knowledge that they are equally deserving of concern, respect and consideration. Section 15(1) recognizes and cherishes the innate human dignity of every individual:

“Section 15(1) of the *Charter* is of fundamental importance to Canadian society. The praiseworthy object of the section is the prevention of discrimination and the promotion

of a “society in which all are secure in the knowledge that they are recognized at law as human beings equally deserving of concern, respect, and consideration. It has a large remedial component”: *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, at p. 171. It has been recognized that the purpose of s. 15(1) is “to advance the value that all persons be subject to the equal demands and burdens of the law and not suffer any greater disability in the substance and application of the law than others”: *R. v. Turpin*, [1989] 1 S.C.R. 1296, at p. 1329. It is this section of the *Charter*, more than any other, which recognizes and cherishes the innate human dignity of every individual. It is this section which recognizes that no legislation should treat individuals unfairly simply on the basis of personal characteristics which bear no relationship to their merit, capacity or need.”

***Egan v. Canada*, [1995] 2 S.C.R. 513 at 583-4**  
see also ***Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 at 666-7**

28. As the Supreme Court of Canada ruled in *Egan, supra*, sexual orientation is an analogous ground and is a personal characteristic of a group whose members have suffered “social, political and legal disadvantage in our society.” For the same reasons, family status is a personal characteristic worthy of s. 15 protection.

***Egan, supra*, at 599-603**

29. The Book Ban Resolution is inconsistent with *Charter* values underlying s. 2(a) because it attempts to impose the religious or conscience-based convictions of a segment of the Surrey school district electorate on all those who seek the benefits of citizenry through the education system. The *Charter* does not permit the State (here the Board), through its laws, to favour one religion over another or to discriminate against some citizens based on their lack of adherence to a particular religion or lifestyle.

***Big M Drug Mart, supra*, at 336**

30. A resolution which is designed to suppress information about or knowledge of the sexual orientation of some members of society is no more defensible than a resolution to suppress information about or knowledge of persons of various races. Both of these motives are included in the enumerated or analogous grounds set out in s. 15(1) of the *Charter*, and therefore such resolutions are *ultra vires* as being wholly inconsistent with *Charter* values.

## THE HUMAN RIGHTS CODE

31. The purposes of the *School Act* should also be determined in a manner consistent with the *Code*. In particular, s. 8 of the *Code* provides that persons cannot without a *bona fide* reason be denied or discriminated against regarding any “accommodation, service or facility customarily available to the public” because of religion, family status, sex or sexual orientation.
32. Although it is “not quite constitutional” in status, the *Code* is “a public and fundamental law”, which “declares public policy regarding matters of general concern,” and “incorporates certain basic goals of our society.” In the event of a conflict, the *Code* prevails over other provincial statutes unless there is a clear legislative pronouncement to the contrary. There is no such pronouncement in the *School Act*.

*Winnipeg School Division No. 1 v. Craton*,  
[1985] 2 S.C.R. 150 at 156  
*Robichaud v. Canada (Treasury Board)*,  
[1987] 2 S.C.R. 84 at 89-90

33. Read in light of s. 8 of the *Code*, it is clear that s. 76 prohibits school boards from making facilities in the public school system available on a preferential basis (or unavailable on a discriminatory basis) in pursuit of non-secular objectives. The Board sought to do just that when it purported to prohibit the depiction of same-sex families as part of the Personal Planning K to 7 curriculum, while at the same time depicting other family arrangements in a positive light.

*University of British Columbia v. Berg*,  
[1993] 2 S.C.R. 353 at 387, 391-2  
*Bowes v. City of Victoria*,  
(1998), 53 B.C.L.R. (3d) 330 at 335-6

### Appellant's Concerns

34. The Appellant expresses three concerns in connection with an interpretation of s. 76 that renders the Book Ban Resolution invalid:

(a) Such an interpretation does not permit the Board to employ its powers over the curriculum so as to enhance the constitutional right of parents to educate their children according to their religious and moral views without interference from the school (paras. 43 and 70 of the Appellant's Factum).

(b) The *School Act* prohibits indoctrination in particular religions or specific denominational views, but does not prevent general religious beliefs from influencing school decisions (paras. 50 and 54 of the Appellant's Factum).

(c) It cannot have been the intent of the Legislature to distinguish between morality and religiosity because to do so would force schools to be run on atheistic or agnostic principles as opposed to religious ones. If this were the intent, this would render s. 76 incompatible with s. 2(a) of the *Charter* (para. 67 of the Appellant's Factum).

35. The Intervenor respectfully submits that each of these concerns is without merit. Each will be taken in turn.

**The Chambers Judge's interpretation of s.76 does not permit the Board to employ its powers over the curriculum so as to enhance the constitutional right of parents to educate their children according to their religious and moral views without interference from the school (paras. 43 and 70 of the Appellant's Factum).**

36. As the Supreme Court of Canada held in *Jones, supra*, parents have a constitutional right to teach their children according to their own religious beliefs.

***Jones, supra*, at 298**

37. The teaching about same-sex family models in a positive light in publicly-funded schools, as a secularized moral principle consistent with the *Charter* values underlying s.

15(1), does not in any direct or indirect way interfere with what parents may do in their homes or coerce them to abandon their religious beliefs.

38. The Board's jurisdiction is limited to the "establishment, operation, administration and management of schools." It has been empowered to enact delegated legislation and to exercise a discretionary power of decision on various matters. These powers must be exercised in accordance with the *Charter*.

***School Act, s. 85***

39. As Dickson J. (as he then was) stated in *Big M Drug Mart, supra*, "both the purpose and the effect are relevant to determining constitutionality." Clearly, a decision by the Board to approve the Three Books within the school would not have as its purpose interference with the rights of parents to teach their religious beliefs to their children in the home.

***Big M Drug Mart, supra, at 331***

40. As well, such a decision cannot be said to have this effect. The Appellant presented no such evidence from any parent in Surrey. The evidence presented spoke only to difficulties parents might experience in trying to explain the "dissonance" between what they wished to teach at home and what might be taught in schools. Such "dissonance" is bound to occur within any school system in a pluralistic society and has clearly been contemplated by *School Acts* in force in B.C. over the past 100 years that required secular management notwithstanding its potential to vary from religious dogma found in many homes.
41. The Appellant attempts at paragraph 63 of its Factum to draw an analogy between respecting the rights of Sikh students to wear the kirpan in schools, and respecting the religious rights of parents to teach their children in accordance with their beliefs.
42. Prohibiting the kirpan in schools would force Sikh students to act in a manner contrary to their religious beliefs. This is clearly a violation of Sikh students' s. 2(a) *Charter* rights. However, approving the Three Books for inclusion in the curriculum does not force students to act in any way contrary to their religious beliefs or prevent parents from continuing to teach their children in accordance with those beliefs in the home.
43. The potential for conflict between the religious beliefs of parents and the curriculum highlights the important separation between religion and secular morality that has been legislated in the schools by s. 76 of the Act. Otherwise, as was evident in this case, the school system becomes a battleground, either between differing religious beliefs, or between religious and non-religious beliefs.
44. The right of parents to participate in the process of determining educational goals for their children in partnership with school boards is recognized in the *School Act*, the case law, as well as Ministry Orders. School boards can and must take parental views on various matters into account. There is no conflict between the role of parents and the teaching of various forms of family organization, as mandated by the IRP for the Personal Planning curriculum. However, only parental input that is consistent with the *School Act*, the *Charter*, and the *Code* can be accepted and incorporated into Board decisions.

***School Act, s. 7***

**A.B., Vol. XIV, pp. 2658**

**A.B., Vol. I, p. 53; Vol. I, p. 94**

45. When a school board exercises its power to accommodate the religious views of parents, it acts contrary to the purposes set out, expressly or by implication, in the *School Act*,

which are gleaned from the plain language of the Act, as well as *Charter* values discussed above. In such instances, the school board's decision is *ultra vires*.

**The School Act prohibits indoctrination in particular religions or specific denominational views, but does not prevent general religious beliefs from influencing school decisions (paras. 43 and 70 of the Appellant's Factum).**

46. The Appellant's contention at paragraph 54 that the only intent of s. 76 is to keep schools free from religious and sectarian teaching and indoctrination is contrary to the plain wording and structure of this provision. Section 76(2) clearly prohibits the teaching of religious principles to students. In addition, however, and of particular relevance to this appeal, s. 76(1) contains the broad commandment that all schools "shall be conducted on strictly secular and non-sectarian principles." [Emphasis added]
47. Over the course of its development, the legislation pertaining to schools in British Columbia has contained clearly and variously worded prohibitions against religious teaching, materials and personnel. For example, The *Common School Act*, 1865 "strictly excluded" "all Books of a Religious Character, teaching Denominational Dogmas". According to the *Public School Act*, 1872, "no religious dogmas or creed" was to be taught, and clergymen were precluded from significant involvement in schools.  
**R.J., para. 92**  
**A.B., Vol. XXIV, pp. 4529-32**  
**The Common School Act, 1865, No. 6, 28&29 Victoria (1865)**  
**The Public School Act, 1872, S.B.C. No. 16, 35 Vict. (1872), s. 35**
48. The fact that a specific amendment to the legislation was introduced to permit the recitation of the Lord's Prayer lends further support to the proposition that the management of schools was strictly secular. Indeed, the 1944 legislation contained the proviso that "*otherwise* the schools shall be conducted on strictly secular and non-sectarian principles." [Emphasis added]  
**Public School Act, 1891, R.S.B.C. 1936, c. 253, s. 160**  
**Public Schools Act, S.B.C. 1944, c. 45, s. 16**
49. It is also instructive to note that in *Russow v. B.C. (A.G.)* (1989), 35 B.C.L.R. (2d) 29 at 35, Hollinrake J. ruled that the legislature would have enacted s. 164 [now s. 76(1)] without enacting that part that was found to infringe s. 2(a) of the *Charter*. This is because the reference to the scripture and the Lord's Prayer in s. 164 was not "on a fair review of the whole matter" inextricably linked with the remainder of the provision.
50. The legislative intention of the school legislation in British Columbia is highlighted when one considers its Ontario counterpart. In *Canadian Civil Liberties Association v. Ontario (Education Minister)*, the Court of Appeal found a consistent intention in the impugned legislation to indoctrinate school children in the Christian religion. The Court of Appeal noted that this fundamental intention was not altered by recent "minor amendments" that allowed for some study of other religions.  
**Canadian Civil Liberties Association v. Ontario (Education Minister)**  
**(1990), 71 O.R. (2d) 341 (C.A.)**
51. In any event, the concerns expressed by some Surrey parents, religious representatives and some trustees are sectarian in nature and should not have played a role in the Board's decision. In fact, contrary opinions have been expressed by both parents and religious representatives, as set out in the affidavit evidence presented by the Respondents in this Court in Chambers.

**R.J., para. 92  
A.B., Vol. XXIV, pp. 4540-1**

**It cannot have been the intent of the Legislature to distinguish between morality and religiosity because to do so would force schools to be run on atheistic or agnostic principles as opposed to religious ones. If it were, would render s. 76 incompatible with s. 2 of the *Charter* (para. 67 of the Appellant's Factum).**

52. The interpretation of the *School Act* adopted by the Learned Chambers Judge and urged here does not mean that moral principles taught to children in accordance with s. 76(2) cannot be based on religious concepts. There is no doubt that, historically, religion played a prominent role in the evolution of the moral principles upon which our society is founded.
53. However, in the passage from a principle or edict to which some individuals, value systems or religions adhere to a law or custom adopted by society as a whole, a particular principle can acquire an independent secular existence apart from its religious or moral foundation. Thus, the issue is not whether a principle is moral or religious (it quite often is, but need not be, both), but whether it has been secularized. Secular principles are those principles, whether religiously founded or not, that have been secularized by being recognized as valid in our democratic, pluralistic society.
54. An obvious indication of such secularization is the incorporation of what was a religious or moral principle into a statute. For example, the religious or moral commandment "thou shalt not steal" has been secularized by its incorporation into the *Criminal Code* and is now a secular principle of general application. Since there is no conflict between the religious and the secular - in this case, s. 76 permits the inculcation of the principle.
55. The effect of s. 76 of the *School Act* is to require this secularization before principles with a religious foundation qualify for inclusion in school curriculums. The religious principles that motivated the trustees in this case have not been adopted by our democratic pluralistic society. On the contrary, to the extent those principles justify discrimination based on sexual preference or other personal characteristics, they have been expressly rejected by the highest statement of secular principle available in our society - the *Charter*.
56. The Appellant School Board does not escape the requirements of s. 76 by characterizing the Book Ban Resolution as secular in nature. It was directed at the curriculum in the schools, and was passed in an effort to make that curriculum conform to certain religious principles. These religious principles have not received the blessing of our secular society. Thus the Book Ban Resolution was infused with religious principles in a way that s. 76 prohibits.

### **Summary**

57. If, for religious reasons, parents feel strongly that positive messages about same-sex couples should not be taught to their children, they have the right to place their children in private schools or to teach them at home in accordance with their beliefs. The appellant's argument in this case is tantamount to giving parents with particular religious

views the right to dictate how state funds will be spent on public schools that are meant to serve the whole of our pluralistic society.

58. As a general proposition, the Board's concern for the views of parents in the management of schools and the setting of curriculum is secular in nature. However, when this concern is driven by the religious views of parents, and when the Board acts in accordance with those concerns, the Board becomes the instrument by which these religious views are imposed on others. This irreparably taints the Board's resolution as religious in substance.

**B. Did the Learned Judge misdirect herself concerning the appropriate standard of review applicable to a school board when considering learning resources for approval?**

59. The Intervenor, British Columbia Civil Liberties Association, takes no position on this issue of the appeal.

**C. Did the Learned Judge err by ignoring relevant and conclusive evidence and drawing erroneous conclusions from the evidence with respect to the issues raised by the Three Books and the effect of using the Three Books as instructional learning resources in Kindergarten and Grade One classrooms?**

60. The Intervenor, British Columbia Civil Liberties Association, takes no position on this issue of the appeal.

**PART 4  
NATURE OF ORDER SOUGHT**

The Intervenor requests an Order dismissing the Appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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Christopher W. Sanderson

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Christopher E. Gora

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Keith B. Bergner

**Vancouver, British Columbia  
September 23, 1999**

