COURT OF APPEAL FILE NO. CA031628

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On appeal from the Judgment of The Honourable Mr. Justice Holmes pronounced in the Supreme Court of British Columbia the 3rd day of February, 2004

BETWEEN:

CHRISTOPHER STEPHEN MYLES KEMPLING

APPELLANT

AND:

THE BRITISH COLUMBIA COLLEGE OF TEACHERS

RESPONDENT

AND:

THE B.C. CIVIL LIBERTIES ASSOCIATION

INTERVENOR

INTERVENOR'S FACTUM

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CHRONOLOGY OF THE RELEVANT DATES IN THE LITIGATION

The Intervenor B.C. Civil Liberties Association ("BCCLA") adopts the Chronology in the Appellant's Factum.

OPENING STATEMENT

At the heart of this case is the balance that must be struck between the rights of a public servant to free political and religious expression in the public forum on the one hand, and the rights of students to be educated in a tolerant environment, free from discrimination, on the other.

Eight years ago, the Supreme Court of Canada in *Ross v. New Brunswick School District No. 15* resolved that balance in favour of the students, upholding an order sanctioning a teacher for public statements of a racist character. The novel aspect of this case is that, unlike Ross, there is no evidence of a poisoned school environment.

The BCCLA says that discriminatory writings, when made in a public forum and linked to the speaker's professional capacity as a teacher and student counsellor, can constitute a harm even absent evidence of a poisoned environment. Words can in some circumstances present a real barrier to access with respect to vulnerable minorities. While not necessarily justifying infringement in all cases, this harm can be weighed in assessing the reasonableness of the infringement of the speech. In such a case an infringement of freedoms of religion and expression may be justified on the basis of that harm.

The challenge posed in this case is to find a principled approach to permit the broadest freedom of expression for public professionals, whether 'on duty' or 'off duty', consistent with their public and professional responsibilities. By its very nature, this case must be determined at the section 1 stage when balancing a person's own rights and duties and those of others affected by his speech. It should not be decided, as it was in the Court below, on the basis that Mr. Kempling's expression attracts no *prima facie* protection because it was made in his professional capacity.

A second question relates to the propriety of relying on private writings when assessing restrictions on Mr. Kempling's expression. The BCCLA says that these private writings, while perhpaps providing evidence of Mr. Kempling's discriminatory beliefs, could not constitute a barrier to access as public writings might. The B.C. College of Teachers ("College") should not have considered these private writings in assessing Mr. Kempling's conduct.

The BCCLA therefore offers to this Court its own views on the restriction of speech by a person in Mr. Kempling's position, and the proper analysis to be applied. It does not adopt or endorse the reasons of the College offered in support of its decision.

PART 1 - STATEMENT OF FACTS

The BCCLA adopts the facts set out in paragraphs 1-6 and 11 of the Appellant's Factum.

PART 2 – ISSUES ON APPEAL

The BCCLA accepts that the Parties to this Appeal define its issues; the BCCLA adopts no position regarding the outcome of the Appeal.

PART 3 – ARGUMENT

I. The *Charter* Analysis

A. Introduction

1. Mr. Justice Holmes below held that the College's disciplinary action did not infringe Mr. Kempling's *Charter* rights, and that any infringement would have been justifiable under s. 1. While the BCCLA's analysis below could also support a finding that the infringement is saved under section 1, the BCCLA strongly disagrees with the proposition that the College's action does not constitute a *prima facie* infringement of ss. 2(a) and 2(b).

2. In the BCCLA's view, it is important to revisit the approach taken by the Court below to ensure that proper recognition is afforded to expressive and religious freedoms that are engaged by the College's order.

B. Section 2(b): Freedom of Expression

3. Under *Irwin Toy Ltd. v. Quebec (A.G.)*, the first step in a s. 2(b) challenge is to determine whether Mr. Kempling's writings constitute expression, i.e. whether they convey meaning. The second step is to ask whether the College's order restricts the freedom to convey that meaning in purpose or in effect.

> ***Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, at pp. 967-978**

4. Mr. Kempling's writings obviously convey meaning. The truthfulness, harmfulness, popularity or social value of the writings is not an appropriate consideration.

> ***Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, at para. 62**

5. With respect to the second step, the conclusion of the Supreme Court of Canada in *Ross v. New Brunswick School District No. 15* -- a case with very similar facts – is apposite to the instant case:

> In the present case, the purpose of the Board's order, while intended to remedy the discrimination with respect to services available to the public, is to prevent the respondent from publicly espousing his views while he is employed as a public school teacher. On its face, the purpose of the order is to restrict the respondent's expression; it has a direct effect on the respondent's freedom of expression, and so violates s. 2(*b*) of the *Charter*.
>
> ***Ross, supra* at para. 66**

6. The Court below said this in relation to s. 2(b):

> What s. 2(b) does not protect is the appellant's right to express or to purport to express strictly personally-held, discriminatory views with the authority of or in the capacity of a public school teacher/counsellor.
>
> **Appeal Record, p. 90, para. 73**

7. The Court below concluded, on the basis of that proposition, that Mr. Kempling's s. 2(b) rights were not infringed in purpose or effect. With respect, the approach taken by the Court below is erroneous. While the capacity of the speaker may well be a contextual factor in the s. 1 analysis, it is irrelevant at the s. 2(b) stage.

8. Entering into a certain profession or carrying on a certain activity does not –and ought not – automatically strip an individual of their expression rights. An approach to s. 2(b) which *a priori* excludes certain expression from protection on the basis of the professional capacity in which the speech is made is arbitrarily categorical, and inconsistent with a broad and purposive interpretation of the right.

9. The approach adopted by Holmes J. becomes particularly problematic when 'off-duty' conduct is used as the basis for disciplinary action. Off-duty conduct may rightly be scrutinized on the basis that individuals in a position of trust and responsibility, such as teachers, are in some sense never fully 'off-duty'. But when that principle is coupled with an exclusion of constitutional protection for 'on-duty' expression, teachers and similar figures are effectively left without the freedom to express themselves. That is far too narrow an understanding of the expression guarantee.

***Ross, supra*, at paras. 44-45**

10. The Court below relied on *Walker v. Prince Edward Island* in determining that Mr. Kempling's expression, once characterized as being made in his professional capacity, did not attract s. 2(b) protection. In *Walker*, the Court held that a provision of the *Public Accounting and Auditing Act* limiting the right to practise public accountancy to members of the Institute of Charter Accountants did not infringe s. 2(b). As the Court below emphasized, the Court in *Walker* noted that the impugned provision "does not prohibit anyone from expressing themselves about any accounting matter". But that was not the basis for the Court's decision. Rather, the Court went on to say that:

> A construction which would have s. 2(b) include a guaranteed right to carry on a business, to practise a profession, to be regarded as authoritative in a field, or to charge a fee for services as a public accountant overshoots its purposes and goes beyond what is necessary to give effect to it.
>
> ***Walker v. Prince Edward Island* (1993), 107 D.L.R. (4th) 69 (P.E.I.S.C.A.D.) at pp. 73, 74, aff'd [1995] 2 S.C.R. 407**

11. The activities at issue in *Walker* are probably best regarded as activities which do not convey meaning in the sense required by the first step of the *Irwin Toy* test. *Walker* is authority for the proposition that the freedom of expression rights guaranteed by the *Charter* do not confer a constitutional right of access to a profession. *Walker* does not say that members of a certain profession can be categorically deprived of their expression rights on the basis of their professional duties.

C. Section 2(a): Freedom of Religion

12. The Court below took the same "professional capacity"-based approach to freedom of religion as it did to freedom of expression. As respectfully submitted above, that approach is erroneous.

13. On their face, Mr. Kempling's writings appear largely directed at discussing the risks of homosexual behaviour, as well as political issues of local and provincial significance. He often relies on statistical evidence and his self-declared professional expertise. Yet Mr. Kempling's writings are evidently informed by his religious beliefs,

and contain a component of explicitly religious expression. Mr. Kempling writes that religions consider homosexual behaviour to be "immoral", and himself characterizes gay promiscuity as "immorality". Perhaps the most telling line is this: "To all my critics I say, 2 Peter 2:4-19. Read it and weep."

Appeal Book, p. 43

14. Mr. Kempling's writings thus had a religious aspect which is sufficient to attract s. 2(a) protection. In *Ross*, Mr. Ross's anti-Semitic remarks, the purpose of which was "to attack the truthfulness, integrity, dignity and motives of Jewish persons", nevertheless were protected by s. 2(a). As Dickson J. said in *R. v. Big M Drug Mart Ltd.*:

> The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination. [emphasis added]

***Ross*, *supra*, at paras. 91, 76**
***R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 at p. 336**

15. It is impossible to separate Mr. Kempling's religious beliefs from his political assertions. By acting to restrict Mr. Kempling's expression, the College inevitably prevented Mr. Kempling from declaring, teaching, and disseminating his sincerely held religious beliefs in relation to homosexuality, and his s. 2(a) rights were thus infringed.

D. Section 1: A Justifiable Infringement

16. This case is one of competing rights and interests. Mr. Kempling has an interest in speaking his mind on the issue of homosexuality and his religious views. This interest, as we have submitted, is constitutionally protected by ss. 2(a) and 2(b) of the *Charter*. On the other side of the ledger, gay, lesbian and bisexual students have a right under s. 15 of the *Charter* to an education system that is respectful of their dignity, and in which they will be free from discrimination. All students, whether they be heterosexual or homosexual, enjoy statutory rights to a tolerant educational

environment, free from prejudice and discrimination, and society at large has an interest in maintaining such an environment.

***Chamberlain v. Surrey School District No. 36*, [2002] 4 S.C.R. 710, paras. 18-25**

17. The competition between the rights of Mr. Kempling and the rights of the students of Quesnel must be resolved under s. 1 of the *Charter*. The question is whether, in all the circumstances, the restrictions placed by the College on Mr. Kempling's expressive conduct are a demonstrably justified infringement of the expression of his religiously-based views.

(1) *Ross* and Evidence of a Poisoned Environment

18. *Ross* is authority for the proposition that where a teacher has made discriminatory public statements, even while off-duty, and there is evidence that the school environment has been "poisoned", restriction of the teacher's freedoms by disciplinary action may be justifiable.

19. In the instant case, there is no positive evidence of a poisoned school environment. If there were such evidence, this case would be on all fours with *Ross*, and the matter would be ended.

20. The BCCLA submits that the absence of evidence of a "poisoned school environment" should not insulate Mr. Kempling from disciplinary action designed to protect the rights of students and prevent discrimination. The question is simply whether Mr. Kempling's expression caused harm. Whether that harm is manifested as a poisoned school environment or in some other form ought not to distract from that primary inquiry.

21. The BCCLA submits that Mr. Kempling's public writings, which discriminated against homosexuals and were linked to his professional capacity, were harmful expression the infringement of which may be justified. The explicit link between Mr. Kempling's discriminatory public statements and his public and professional duties – which was absent in *Ross* – provides in this case the requisite nexus between

Mr. Kempling's discriminatory statements and the school environment, and thus substantiates the harmfulness of his speech.

(2) The Contextual Approach

22. The Supreme Court of Canada recently considered the need for evidence of harm in order to justify an infringement of freedom of expression in *Harper v. Canada (Attorney General)*. Bastarache J., for the majority, began his s. 1 analysis with these words:

> The central issue at this stage of the analysis is the nature and sufficiency of the evidence required for the Attorney General to demonstrate that the limits imposed on freedom of expression are reasonable and justifiable in a free and democratic society. [...]
>
> The context of the impugned provision determines the type of proof that a court will require of the legislature to justify its measures under s. 1; see *Thomson Newspapers*, at para. 88. As this pivotal issue affects the entire s. 1 analysis, it is helpful to consider the contextual factors at the outset.
>
> ***Harper v. Canada (Attorney General)*, 2004 SCC 33, at paras. 75-76**

23. The majority considered four factors in *Harper*:

(i) the nature of the harm and the inability to measure it;

(ii) vulnerability of the group;

(iii) subjective fears and apprehension of harm;

(iv) the nature of the infringed activity.

***Harper, supra*, at paras. 77-78**

24. Bastarache J. did not say that those factors were exhaustive, and a contextual analysis must be responsive to the unique circumstances of each case. The BCCLA will rely on three of the *Harper* factors, and we will substitute an examination of the public and professional responsibilities of public school teachers for Bastarache J.'s "subjective fears" factor, the former more squarely arising in this case. Taken in sum,

certain of Mr. Kempling's writings, considered in the specific context of of this case, are harmful.

(i) *The Nature of the Harm*

25. The BCCLA submits that Mr. Kempling's writings created a barrier to access to a tolerant and non-discriminatory educational environment which was harmful in itself.

26. There is no such thing as speech that is harmful per se, that is, absent of context. Words that are entirely innocuous in one context may be justifiably restricted in another. As Marshall J. famously said in Cleburne v. Cleburne Living Centre, Inc., "[a] sign that says 'men only' looks very different on a bathroom door than a courthouse door". Even the most hateful writings, if kept entirely private, are harmless. The question should always be whether the words or writings, expressed in context, were harmful.

***Cleburne v. Cleburne Living Centre, Inc.*, 473 U.S. 432 (1985), at pp. 468-469**

27. Mr. Kempling's public writings cannot be separated from his professional position, and as such they erected a barrier against equal access by vulnerable students to a public service. To borrow Marshall J.'s analogy, they amount to a "men only" sign on a courthouse door.

28. Quesnel is a small community of 11,000 people with two senior secondary schools. Mr. Kempling is one of four counsellors at one of these schools, Correlieu Secondary, a school with 800 students.

Appeal Book, pp. 110-111

29. In a small town such as Quesnel, Mr. Kempling's statements might have been linked to his professional position even if he had not sought to do so himself. The editors of the *Quesnel Cariboo Observer* averred early on to the "ongoing debate" of the "issue, first raised *by local student counsellor* Chris Kempling" (emphasis added). Nevertheless, Mr. Kempling thereafter made the link between his campaign *qua* citizen

and his activities *qua* teacher and counsellor explicit. On August 27, 1999, he wrote in a letter to the editor:

> [...] I am putting my professional reputation on the line over the homosexuality issue [...] some are questioning my competence to counsel.
> I have a professional concern as to what children are taught about human sexuality. [...] Did [the "gay lobby"] think no one would check into the behaviours they would like us to teach school children is [*sic*] acceptable?
> [...]
> I want young people to know that the way gays actually practice their sexual preference is extremely risky and might even be life threatening.
> [...]
> Sexual orientations can be changed [...]. My hope is that students who are confused over their sexual orientation will come to see me.
> It could save their lives. [emphasis added]

Appeal Book, p. 18

30. Subsequently, Mr. Kempling made a second explicit reference linking his views on homosexuality (this time in the context of a debate over Gay Pride Day in Quesnel) with his performance in school. Indeed, he suggests that his role as teacher actually *mandates* the public position he takes:

> I refuse to be a false teacher saying that promiscuity is acceptable, perversion is normal, and immorality is simply "cultural" diversity of which we should be proud.
> Section 95(2) of the School Act says that teachers must "inculcate the highest moral standards".

Appeal Book, p. 43

31. Mr. Kempling has made it abundantly clear through his published writing that his views that homosexuality is "immoral" and a "perversion" will inform his performance in his position at the school. Mr. Kempling's public statements indicate not only a particular belief set, but also an unwavering commitment to acting in an intolerant and discriminatory way in fulfilling his public and professional responsibilities. Under such circumstances, the speech itself has become a barrier to equality for gay students, in the same way as if Mr. Kempling had hung a sign outside his door saying "No Gays".

32. The harmful effects of the barrier Mr. Kempling created will not always make themselves visible. We can never know how many gay students *didn't* seek out Mr. Kempling's counselling services, or elect to take his classes. In this way, the very nature of the harm may make it elusive of proof.

(ii) *The Nature of the Expression*

33. This factor squarely raises the balance that must be struck between Mr. Kempling's expression rights, and the rights which are threatened by his expression.

34. In RJR-MacDonald Inc. v. Canada (Attorney General), La Forest J. summarized the core values of freedom of expression as including "the search for political, artistic and scientific truth, the protection of individual autonomy and self-development, and the promotion of public participation in the democratic process".

***RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199, at p. 280**

35. Mr. Kempling's earliest writings in evidence, while critical of "gay culture" and gay relationships, can fairly be characterized as reasoned religious and political discussion to which the highest constitutional protections would apply. This is particularly so when he is discussing issues removed from the educational context. Examples of Mr. Kempling's more restrained submissions can be found in his article of July 27, 1997, and his letters to the editor of August 10, 1997, and April 12, 2000.

Appeal Book, pp. 11, 14, 19

36. Those writings advanced the search for political truth, and sparked a social and political debate which promotes public participation in the democratic process. In addition, the extent to which the writings had a religious aspect may rightly support the view that Mr. Kempling was self-fulfilled by sharing and publicly disseminating his beliefs in that regard. The public writings are, in general, expression close to the "core' of the s. 2(b) guarantee. Again, the law must be careful about simply prohibiting public servants from expressing controversial ideas in the public forum. The BCCLA therefore considers Mr. Justice Holmes' blanket declaration in the Court below (at para. 96) that

"[d]iscriminatory speech is incompatible with the search for truth" is dangerously overbroad.

37. The beliefs expressed by Mr. Kempling are not enough to justify disciplinary action. Evidence of discriminatory beliefs alone, even if those beliefs might give rise to the *suspicion* that they may lead to discrimination, ought not generally trigger sanctions.

38. The Supreme Court of Canada's decision in *Trinity Western University v. British Columbia College of Teachers* speaks to this point. Unlike *Ross* and the instant case, in *Trinity Western University* there was no evidence that the impugned beliefs would have an effect on the school environment. The majority accepted that while TWU's "sexual sins" policy may have been discriminatory, it was at best only some indication of its graduates' religious or moral beliefs.

***Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772, at para. 36**

39. In this context, it is important to note again the way in which Mr. Kempling linked his role as a teacher and counsellor to his views on homosexuality. Mr. Kempling's published speech falls squarely within that prohibited by section 7(1)(a) of the *Human Rights Code*. The provision states that:

> A person must not publish, issue or display, or cause to be published, issued or displayed, any statement, publication, notice, sign, symbol, emblem or other representation that
> (a) indicates discrimination or an intention to discriminate against a person or a group or class of persons, or
> [...]
> because of the [...] sexual orientation [...] of that person or that group or class of persons.

***Human Rights Code*, R.S.B.C. 1996, c. 211**

40. Accordingly, the BCCLA submits that this Court may conclude that Mr. Kempling has announced, through his public writings taken as a whole and in context, an intention to discriminate against gay and lesbian students. The announcement of an intention to discriminate establishes the link between Mr. Kempling's discriminatory beliefs and his

performance in school. This case is distinct from *Trinity Western University* in that critical regard.

(iii) *Vulnerability of the Group*

41. In this context, the group sought to be protected is the students of Quesnel, and in particular gay students. The Supreme Court of Canada has on numerous occasions affirmed the vulnerability of homosexuals generally.

***Vriend v. Alberta*, [1998] 1 S.C.R. 493**
***Egan v. Canada*, [1995] 2 S.C.R. 513**

42. This vulnerability is heightened in the school environment. As the Court said in *Ross*:

> Young children are especially vulnerable to the messages conveyed by their teachers. They are less likely to make an intellectual distinction between comments a teacher makes in the school and those the teacher makes outside the school. They are, therefore, more likely to feel threatened and isolated by a teacher who makes comments that denigrate personal characteristics of a group to which they belong. Furthermore, they are unlikely to distinguish between falsehoods and truth and more likely to accept derogatory views espoused by a teacher. The importance of ensuring an equal and discrimination free educational environment, and the perception of fairness and tolerance in the classroom are paramount in the education of young children. This helps foster self-respect and acceptance by others. [emphasis added]

***Ross*, *supra*, at para. 82**

43. Mr. Kempling acknowledges the seriousness of the problem of homophobia in local schools. In a letter to his District's Director of Curriculum, he writes:

> Now we do have a problem with [homophobic] harassment and name-calling in our schools. [...] This is the situation which led to the suicide of that young man in Surrey recently.

Appeal Book, p. 49

(iv) *Public and Professional Responsibilities of Public School Teachers*

44. A contextual factor which is closely related to the vulnerability of the group (in this case, students) is the particular role of teachers, counsellors, and school boards generally in promoting a tolerant society. As this Court said in *Chamberlain v. Surrey School District No. 36*:

> The public schools must teach in accordance with the highest morality and the fundamental principles of truly free society are attributes of the highest morality. That highest morality includes non-discrimination on grounds of sexual orientation. The public schools [...] cannot teach a morality that is inconsistent with it.
>
> ***Chamberlain v. Surrey School District No. 36* (2000), 80 B.C.L.R. (3d) 181 (C.A.), at para. 40**

45. The majority of the Supreme Court of Canada in *Chamberlain* similarly said:

> [I]f the school is to function in an atmosphere of tolerance and respect, in accordance with s. 76, the view that a certain lawful way of living is morally questionable cannot become the basis of school policy. Parents need not abandon their own commitments, or their view that the practices of others are undesirable. But where the school curriculum requires that a broad array of family models be taught in the classroom, a secular school system cannot exclude certain lawful family models simply on the ground that one group of parents finds them morally questionable.
>
> ***Chamberlain* (Supreme Court of Canada), *supra*, at para. 20**

46. It bears emphasizing that Mr. Kempling is not just any teacher. He is a student *counselor* and as such will have special responsibilities with respect to providing counselling and guidance to all youth, including those who are grappling with issues of their sexual orientation or who are gay and need assistance. In his role, Mr. Kempling has a heightened duty not to act in a discriminatory fashion.

(3) Conclusion: A Justifiable Infringement

47. The contextual factors engaged in this case establish that certain of Mr. Kempling's writings created a harmful barrier to access a non-discriminatory educational environment for gay students. The inescapable meaning of certain of

Mr. Kempling's writings *coupled with* his unique responsibilities as a student counselor and teacher provide the required nexus to establish harm necessary to justify state action in this case. One without the other is not enough in the context of this case. It is this nexus that justifies state sanction in the same way that the "poisoned school environment" justified state action in *Ross.*

48. Once the harmful nature of Mr. Kempling's writings is established, it is open for a court to find that *Ross* resolves the rest of the s. 1 analysis, and the College's interest in restricting Mr. Kempling's speech may be regarded as demonstrably justified. In this regard it might also be noted that Mr. Ross suffered a much greater punishment than Mr. Kempling, yet one which was nevertheless found to be minimally impairing and proportionate. Nevertheless, the BCCLA does not consider it the position of an Intervenor to make submissions on the appropriateness of the sanction imposed.

II. The Use of Mr. Kempling's Private Writings

A. Private Writings Cannot Be the Basis for Discipline

49. Mr. Kempling's private writings are of three kinds:

- Mr. Kempling's three letters to City Councillors;
- Mr. Kempling's two essays; and
- Mr. Kempling's two letters to Mr. Graf.

50. The BCCLA submits that both the College and reviewing courts alike should exclusively examine public expression when determining if the offence of "conduct unbecoming" is made out. Private expression, like public expression, attracts *Charter* protection, and in this case Mr. Kempling's private expressions bring with them no corresponding harm.

***R. v. Sharpe*, [2001] 1 S.C.R. 45**

51. There is no evidence that Mr. Kempling's private writings achieved public distribution. So long as the writings remained private, there could not have been an

adverse impact on the school environment sufficient to warrant sanction, and there is no barrier to access erected by their creation or private dissemination. As the BCCLA submitted above, writings, however discriminatory, are not harmful *per se*, and private expressions of belief cannot provide grounds for impugning a teacher's conduct.

52. As a result, Mr. Kempling's private writings ought not to have formed part of the grounds for the College's findings against him. To the extent those writings formed part of the basis for the decision, the College's order would fail the *Oakes* test on the ground that there is no rational connection between the disciplinary order and the objective of preventing discrimination, since the writings giving rise to the discipline could not have caused or amounted to discrimination in the first place.

B. The Inadequacy of the College's Reasons

53. Unfortunately, the extent to which those writings *were* used against Mr. Kempling is not clear from the reasons given by the College on the merits. The private writings were listed in the Citation against Mr. Kempling, and were listed in the College's "Findings of Fact" as "[o[ther correspondence in which Mr. Kempling expressed his views on sexual orientation". But neither those writings, nor any of the public writings, were explicitly referred to in the reasons for the verdict.

Appeal Record, pp. 9-10, 14

54. The reasons thus do not permit Mr. Kempling and others to discern whether the College impermissibly relied on private expression as the basis for professional sanction. It is incumbent on a disciplinary tribunal, as part of the duty of fairness owed by all administrative actors, to give adequate reasons for its decision. This duty is particularly significant when the discipline relates to expression attracting *Charter* protection, as in the instant case.

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

PART 4 - NATURE OF ORDER SOUGHT

The BCCLA seeks no Order or other remedy.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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B.C. Civil Liberties Association

LIST OF AUTHORITIES