

KNIGHTS OF COLUMBUS DECISION AND THE IMPLICATIONS FOR CHURCHES AND RELIGIOUS CHARITIES THAT RENT OUT THEIR FACILITIES

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A. INTRODUCTION

At the height of the political debate concerning the legislative recognition of same-sex marriage, a same-sex couple in British Columbia brought a human rights complaint against the Knights of Columbus, a Catholic men's organization, when they were denied use of the Knights' facility for their same-sex wedding reception. In their 2004 complaint, the couple alleged the Knights, by denying them the use of a facility that was managed by the Knights and owned by the Archdiocese of Vancouver, had discriminated against them on the basis of their sexual orientation. In response to the human rights complaint, the Knights claimed they had a *bona fide* and reasonable justification for denying the couple the use of the hall: the guarantee of freedom of religion under the Charter¹ protects religious groups from having their property used for a purpose contrary to their religious beliefs.

B. BC HUMAN RIGHTS TRIBUNAL DECISION

The British Columbia Human Rights Tribunal panel (the "panel") concluded the same-sex couple had established a *prima facie* case of discrimination in that they had been denied a service "customarily available to the public," and that this denial had offended the couple's human dignity.² In reaching this conclusion, the

¹ *Canadian Charter of Rights and Freedoms*, Schedule B, Constitution Act, 1982 ["Charter"].

² *Smith and Chymyshyn v. Knights of Columbus and others*, 2005 BCHRT 544 at 11-12. ("Knights decision").

panel heard evidence that the couple were offended by the manner in which the Grand Knight handled negotiations with them regarding the amount of compensation they would receive following the Knights' breach of the rental contract. The panel concluded that the Knights, although justified in maintaining that the hall's use could not be contrary to Catholic beliefs, had not made a sufficient effort "to search for a pragmatic and workable solution that minimizes the adverse effects on the rights of a complainant."³ As a result, the Knights were ordered to pay \$1,444.59 to the complainants for expenses incurred by them and for injury to their dignity.⁴

In their decision, the panel provided an extensive analysis of the Knights' defence of *bona fide* and reasonable justification. They used the three-part test set out by the Supreme Court of Canada in the Meiorin decision⁵ as the guideline for this analysis, questioning whether:

1. the Knights adopted a standard for a purpose or goal that is rationally connected to the function being performed;
2. the Knights adopted a standard in good faith, in the belief that it is necessary for the fulfilment of the purpose or goal; and
3. the standard the Knights adopted is reasonably necessary to accomplish their purpose or goal, in the sense that they cannot accommodate persons with the characteristics of the claimant without incurring undue hardship.

1. Was the standard the Knights adopted rationally connected to the denial of the rental facility?

The Knights suggested they could not rent the facility to the same-sex couple for their wedding reception as this would be contrary to one of their core Catholic beliefs, which is that members of the Church should not "promote, solemnize or celebrate same-sex marriages."⁶ This standard was accepted by the panel despite the fact there was nothing in writing to support the Knights' position in this regard. However, there are precedents for the principle that the lack of a prior clearly articulated standard does not foreclose a party from putting the standard forward.⁷ The panel recognized that, "(i)t is not unusual for a standard not to be articulated until the issue presents itself."⁸

³ *Ibid.* at 32.

⁴ *Ibid.* at 41.

⁵ *British Columbia Public Service Employee Relations Commission v. BCGSEU*, [1999] 3 S.C.R. 3 ("Meiorin decision").

⁶ Knights Decision, *supra* note 2 at 13-14.

⁷ See for example *Wabush Mines v. Power* (1997), 30 C.H.R.R. D/87; *Vancouver Rape Relief v. Nixon*, 2002 BCHRT 1.

⁸ Knights decision, *supra* note at 14.

The Knights' position was that the purpose of the standard was to protect their relationship with the Catholic Church and to act in accordance with their religious beliefs.⁹ The panel accepted that,

...it is clear that one of the core religious beliefs of the Catholic Church is that marriage is a union between a man and a woman, to the exclusion of all others. The Catholic Church's opposition to same-sex marriage and the solemnization of a same-sex union is well known. This core belief is sincerely held.¹⁰

However, the panel rejected the Knight's submission that they only rented the facility to groups that were partaking in activities approved by the Knights, as there had been a history of the facility being rented out for various non-religious functions that were wholly unrelated to the mission and goals of the Knights. There was no screening process or approval process in place other than a clause in the rental agreement that the facility could not be used for any illegal activities.¹¹ Further, the facility was available for the general public to rent and was not restricted to the use of Church members.¹² That the land was owned by the Catholic Church and next door to a Catholic school, and that the facility contained religious items such as crosses and pictures of the Pope was found to be irrelevant to the determination of the function of the rental facility. However, despite the fact that the Knights rented the hall to a wide variety of people for many different types of events, the panel accepted the Knights' reasoning for the standard adopted being that:

The function not only includes the simple dimension of renting the Hall, but that the Hall could only be rented and/or used for events that would not undermine the Knight's relationship with the Catholic Church.

As such, the panel concluded under part one of the test that, "the standard, given its purpose, is rationally connected to the function."¹³ The panel also made a finding that the Knights had established this standard "honestly and in good faith,"¹⁴ under part two of the test.

⁹ *Ibid.* at 14.

¹⁰ *Ibid.* at 16.

¹¹ *Ibid.* at 18.

¹² *Ibid.* at 19.

¹³ *Ibid.* at 21.

¹⁴ *Ibid.* at 22.

2. Was the standard necessary to accomplish the purpose?

In their analysis under part three of the test, the panel focused on whether the Knights had done everything in their power to accommodate the complainants to the point of undue hardship. The panel acknowledged that “everyone is entitled to hold and manifest their own sincerely held religious beliefs and to declare those beliefs.” Yet, this right must be balanced with the right of the complainants not to be discriminated against because of their sexual orientation.¹⁵ Following a review of cases involving a balance between freedom of religion and the right not to be discriminated against based on sexual orientation, the panel highlighted the following principles:

- Freedom of religion is subject to the rights and freedoms of others and cannot be used to roll back advances made by other groups;¹⁶
- In considering competing interests the line is drawn generally between belief and conduct;¹⁷
- Religious views that deny equal recognition and respect to the members of a minority group cannot be used to exclude the concerns of the minority group;¹⁸
- Freedom of religion does not extend to the practice of those religious beliefs in the public marketplace;¹⁹
- The further the activity is from the “core elements” of the religious belief, the more likely it is that the activity will impact on others and the activity is therefore less deserving of constitutional protection;²⁰
- The equality rights of same-sex couples do not displace the rights of religious groups to refuse to solemnize same-sex marriages which do not accord with their religious beliefs. Similarly the rights of religious groups to freely practise their religion cannot oust the rights of same-sex couples seeking equality, by insisting on maintaining the barriers in the way of that equality;²¹
- A person invoking religious freedom does not need to prove their beliefs are identical to, or generally accepted by others of the same religion as long as their beliefs are sincerely held;²² and

¹⁵ *Ibid.* at 22.

¹⁶ *Ross v. School District No. 15*, [1996] 1 S.C.R. 825.

¹⁷ *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 722 at para 36- 37.

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

¹⁹ *Brookie v. Ontario (Human Rights Commission)*, [2002] O.J. No. 2375.

²⁰ *Ibid.* at para. 51.

²¹ *Egale Canada Inc. v. Canada (Attorney General)* (2003), 13 B.C.L.R. (4th) (B.C.C.A.).

²² *Syndicat Northcrest v. Anselem*, 2004 SCC 47.

- An infringement of religious freedom occurs where the conduct at issue interferes with the religious belief in a manner that is more than trivial or insubstantial.²³

Basing its analysis on these legal principles, the panel described a spectrum of situations in which the right to religious freedom might conflict with the right not to be discriminated against based on sexual orientation. At one end of the spectrum is the situation where the Catholic Church would be asked to allow a same-sex couple to marry in a church or have a wedding reception in a church hall. The panel recognized that “to do so would have required it to provide its religious space for an activity contrary to its core religious beliefs,” and would be a clear infringement of freedom of religion.²⁴ At the other end of the spectrum is a situation where a commercial space is being rented out to the public. In such a case there would be no reason to deny the use of the space to a same-sex couple celebrating a wedding. In the present case, the panel found that the hall was available to the public, regardless of religion, “but it was also a Hall that could not be used for an event that was contrary to Catholic beliefs.”²⁵

The panel concluded that the Knights were obligated to accommodate the complainants to the point of undue hardship, and should have considered alternatives prior to breaching their rental agreement, such as “meeting with the complainants to explain the situation, formally apologizing, immediately offering to reimburse the complainants for any expenses they had incurred and perhaps offering assistance in finding another solution.”²⁶

3. Do B.C. Human Rights Code Exemptions Apply?

Finally, the panel rejected the Knights’ submission that they fell within the exemption provided in the *British Columbia Human Rights Code* for non-profit organizations.²⁷ This exemption provides that non-profit and religious organizations can give preferential treatment to their members in some circumstances. The Knights were not able to provide sufficient evidence to establish the facility was used only by people engaging in religious activities or that preference was normally given to church members who wanted to rent the facility, and as a result this exemption was found not to apply.

²³ *Ibid.* at para 59-60.

²⁴ Knights decision, *supra* note at 28.

²⁵ *Ibid.* at 29.

C. COMMENTARY

The Knights decision points to the need for churches and religious groups to review their facilities use policy to ensure it reflects both human rights obligations and religious beliefs. In this regard, Ontario churches and religious groups that do not want their facilities to be used in relation to same-sex marriages may find some limited protection in the following exemptions provided in the Ontario *Human Rights Code*²⁸:

18. The rights under Part I to equal treatment with respect to services and facilities, with or without accommodation, are not infringed where membership or participation in a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by a prohibited ground of discrimination is restricted to persons who are similarly identified.

Solemnization of marriage by religious officials

18.1 (1) The rights under Part I to equal treatment with respect to services and facilities are not infringed where a person registered under section 20 of the *Marriage Act* refuses to solemnize a marriage, to allow a sacred place to be used for solemnizing a marriage or for an event related to the solemnization of a marriage, or to otherwise assist in the solemnization of a marriage, if to solemnize the marriage, allow the sacred place to be used or otherwise assist would be contrary to,

- (a) the person's religious beliefs; or
- (b) the doctrines, rites, usages or customs of the religious body to which the person belongs.

Same

- (2) Nothing in subsection (1) limits the application of section 18.

Definition

- (3) In this section, "sacred place" includes a place of worship and any ancillary or accessory facilities.

Section 18 enables religious and philanthropic organizations to restrict the use of their facilities to their membership.²⁹ Similar exemptions exist in human rights legislation in other provinces including B.C. However, the Knights were unable to benefit from such an exemption because they did not restrict the use of the hall to their members or to members of the Catholic Church, and instead rented the facility out to any member of the general public.

²⁶ *Ibid.* at 33.

²⁷ *Human Rights Code* (British Columbia), R.S.B.C. 1996, c. 210, s. 41.

²⁸ *Human Rights Code* (Ontario), R.S.O. 1990, c. H.19

²⁹ See Terrance Carter and Esther Oh, "Same-Sex Marriage, What Churches and Religious Organizations Can Do in Response," *Church Law Bulletin* No. 1 (17 December 2003), available at www.churchlaw.ca.

Section 18.1 was recently added to the Ontario *Human Rights Code* in order to provide a specific exemption for churches and religious groups who do not support same-sex marriage from having to perform or participate in same-sex marriage ceremonies or from having their facilities used for this purpose.³⁰ However, this exemption is limited to “sacred places,” which in the Knights decision was found not to include facilities like the hall that was being rented out by the Knights of Columbus. This legislation only applies in Ontario and no other province has amended their human rights legislation to include a similar exemption.

The Knights may still have avoided being fined by the B.C. Human Rights Tribunal had they provided further accommodation to the complainants and fully compensated them for damages incurred pursuant to the breach of contract. Further, had there been a better screening and approval process in place, as well as a facility use policy that clearly stated that their facilities could only be used for purposes consistent with their beliefs and mission, the complaint and ensuing litigation may have been avoided altogether.

A finding of liability for having discriminated in providing a service or facility to the public could have serious consequences for a church or religious group. As well as being fined, as in the present case, the church or religious group could face adverse publicity which could affect its standing in the community. As such, in order to protect themselves from liability, churches and religious groups who want to ensure the use of their facilities is done in accordance with their religious beliefs, are advised to consider the following:

- Restricting the use of their facilities to members only;
- Having a facility use policy that clearly outlines any limits the church or religious group wants to place on the use of the facility and how this relates to the group’s beliefs and mission;
- Having a screening and approval process in place; and
- Implementing and following all facility use policies and screening practices in a consistent manner.

³⁰ See Terrance Carter and Mervyn White, “Update Regarding Same-Sex Marriage Legislation,” *Church Law Bulletin* No. 8 (28 February 2005), available at www.churchlaw.ca.

Although the Knights were fined, the decision provides a positive precedent for churches and religious charities in that it provides a relatively broad interpretation of freedom of religion and recognizes that religious groups who do not support same-sex marriage should not be obligated to make their facilities available to those who are participating in same-sex marriage ceremonies. The panel's decision recognized that beliefs about marriage are "core religious beliefs" deserving of constitutional protection, and included wedding receptions as part of the celebration of marriage such that church halls should benefit from this constitutional protection in the same way as churches. However, the extent to which this decision will be followed by human rights tribunals in other jurisdictions remains to be seen as the decision is based on a unique set of facts involving both human rights and breach of contract issues.



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