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# GRACE APOSTOLIC CHURCH LEGAL SEMINAR

Scarborough – January 31, 2004

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## Recent Case Law Affecting Churches (Power Point Presentation)

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## **Education of Children**

***Chamberlain v. Surrey School District No.36,*  
[2002] Supreme Court of Canada**

- **Three books promoting gay lifestyle used by teacher in public school, to which parents object**
- **Supreme Court of Canada holds that school board's refusal to allow books violate principles of tolerance, diversity, and non-discrimination**
- **Strong dissent by Justice Gonthier**

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## **Vicarious Liability and Sexual Abuse in the Church**

***Doe v. O'Dell,* [2003] Superior Court of Justice, Ontario**

- **Catholic priest sued for sexually abusing young boy (priest had also spent time in prison system)**
- **Roman Catholic Diocese of St. Sault Marie also sued as priest's employer**
- **Ontario Superior Court awarded damages to the victim, payable by both the priest, and the Diocese, as "there was a significant connection between the employment of Father O'Dell and the abuse."**

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***The Roman Catholic Church***

- **Piercing the corporate veil of the Roman Catholic Church to impose liability**
- **“Church pondering liability of church and priest in sex abuse of 36 boys” – Globe and Mail article, January 15, 2004**
- **What is the church’s responsibility in sexual abuse cases?**

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**Trio of British Columbia Cases –  
Vicarious Liability for Sexual Abuse**

***M.B. v. British Columbia*, [2003] Supreme Court of Canada**

- **The Court held that government not vicariously liable for acts committed by foster parents, as foster parents were not acting “on account of” or on behalf of the government**

***K.L.B. v. British Columbia*, [2003] Supreme Court of Canada**

- **The Court held that the government was vicariously liable for the acts of the foster parents on the basis of direct negligence**

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***E.D.G. v. Hammer*, [2003] Supreme Court of Canada**

- **The Court held that the Board of Education does not have a broad fiduciary duty to act in the best interests of the child, nor to ensure that no employee harms school children on school premises regardless of fault**

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**Freedom of Conscience in Action**

**Balancing Rights**

***R. v. Big M Drug Mart*, [1985] Supreme Court of Canada**

- **“Sunday Shopping Case”**
- **Big M Drug Mart violates *The Lord’s Day Act* by carrying on business on a Sunday**
- **Supreme Court of Canada holds that prohibiting Sunday shopping violates freedom of conscience and religion, therefore Sunday shopping is allowed**

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***Trinity Western University v. British Columbia College of Teachers, [2001] Supreme Court of Canada***

- **Private university with religious affiliations applies to B.C. College of Teachers for permission to offer teacher education program**
- **B.C. College of Teachers denies application, as it believes that TWU will condone discrimination based on sexual orientation in its education program, based on its Community Standards code condemning homosexuality**

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- **Supreme Court of Canada finds that there is nothing in TWU Community Standards code which indicates that graduates of TWU will not treat homosexuals fairly**
- **But: “the freedom to hold beliefs is broader than the freedom to act on them.”**

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***Ontario (Human Rights Commission) v. Brockie,***  
**[2002] Ontario Superior Court of Justice**

- **Christian printer refused to print materials for the Gay and Lesbian Archives, citing a violation of his freedom of conscience**
- **Superior Court of Justice rules that “the objectives under the antidiscrimination provisions of the code must be balanced against Mr. Brockie’s right to freedom of religion and conscience.”**
- **“there can be no appropriate balance if the protection of one right means the total disregard of another.”**

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***Owens v. Saskatchewan (Human Rights Commission),***  
**[2002] Saskatchewan Court of Queen’s Bench**

- **Complaint brought against Owens by three homosexuals who felt discriminated against because of Owens’ advertisement of bumper stickers that Biblically condemned homosexuality**

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- **The Saskatchewan Human Rights Commission found that the bumper stickers were discriminatory towards homosexuals**
- **Owens appealed the Human Rights Commission decision**
- **The Saskatchewan Court of Queen's Bench upheld the Commission's decision, and Owens' freedom of expression was limited**

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***Hall v. Powers*, [2002] Ontario Superior Court of Justice**

- **Gay Grade 12 student at Roman Catholic high school challenges school board's decision to prevent him from attending prom with his boyfriend**
- **Ontario Superior Court of Justice rules that "it is not an answer to his s.15 function with his classmates in order to celebrate his high school career."**

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***Hamilton High School Lunch Hour Discussion Club, [2002]***

- **Lunch hour group of high school students meeting with local youth pastor at Hamilton high school has been shut down by principal**
- **Parental group that lobbied school board unsuccessfully for students now represented by Christian Legal Fellowship member**

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***Bill C-45 – New Legislation Affecting Churches and Charities***

- **Bill C-45 received Royal Assent on November 7, 2003, but there is no information forthcoming as to when it will come into force**
- **Under Bill C-45, criminal liability will result from the total collectivized results of the policies, procedures and omissions of a company's senior officials and subordinate employees who have been given delegated health and safety responsibilities**

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