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# BAPTIST CONVENTION OF ONTARIO AND QUEBEC

## Legal Issues Affecting Churches

Toronto – June 10, 2004

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### Presentations

- New Privacy Legislation & the Church – What Churches Need to Do in Response
  - Mark Wong
- An Explanation of Bill C-250 (Hate Propaganda)
  - Bruce Long
- Same Sex Marriages – Legal Context, Including Human Rights Issues and What Churches Can Do in Response
  - Terrance Carter & Mervyn White

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BAPTIST CONVENTION OF ONTARIO AND QUEBEC  
Legal Issues Affecting Churches  
Toronto – June 10, 2004

New Privacy Legislation & the Church -  
What Churches Need to Do in Response

By Mark J. Wong, B.A., LL.B.  
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PIPEDA

- On January 1, 2001 PIPEDA applied to organizations involved in the operation of a federal work, undertaking, or business
- On January 1, 2004, PIPEDA applied to all other organizations engaged in the collection, use and disclosure of personal information in relation to commercial activities

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Introduction

- Overview of some of the developments that have occurred in the area of privacy law within Canada
- Specifically focusing upon the *Personal Information Protection and Electronic Documents Act* which came into force on January 1, 2001 (PIPEDA)
- Review of impact of PIPEDA on charitable and not-for-profit organizations
- See Charity Law Bulletins # 28 and #42 at [www.charitylaw.ca](http://www.charitylaw.ca) for more details

2

- PIPEDA contains the following important definitions

“Organization”

- Includes an association, partnership, person, corporation, or a trade union

“Personal Information”

- Information about an identifiable individual but does not include the name, title or business address or telephone number of an employee of an organization

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– Only that information which can be ascribed to an identifiable individual and does not include general databases which do not allow for the identification of individuals

“Commercial Activity”

– Any particular transaction, act or conduct or any regular course of conduct that is of a commercial character, including the selling, bartering or leasing of donor, membership or other fundraising lists

– Includes any transfer of personal information for profit

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- There are no exceptions in the application of PIPEDA based upon the size of the organization
  - i.e. A small corner convenience store will be forced to comply with PIPEDA in relation to personal information about clients who rent movies
- Compliance with PIPEDA will impose onerous, expensive and time consuming administrative requirements on organizations which collect, use or disclose personal information
- Failure to comply will lead to sanctions under PIPEDA

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- Charities and not for profit organizations may be caught by the act if they engage in “commercial activities”
- “Commercial activities” for a charity or not for profit organization may include a related business (as interpreted by *Income Tax Act*), or alternatively, may include an exchange of value which requires that a charity or not for profit organization incur an expense not normally incurred by it
  - e.g. of “commercial activities”
  - Charitable golf tournament
  - Sale of books, hymnals, magazines
  - Sale of promotional items

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**Application of PIPEDA to Charitable and Non-Profit Organizations**

- On March 31, 2004, the Office of the Privacy Commissioner of Canada (“Privacy Commission”) released a fact sheet which clarifies the application of PIPEDA to charities and non-profits
- The fact sheet states: “The bottom line is that non-profit status does not automatically exempt an organization from the application of the Act”

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- **Whether a charitable or non-profit organization will be subject to PIPEDA depends on whether the organization engages in the kind of commercial activities as defined by PIPEDA:**
  - the presence of commercial activity is the most important consideration of determining whether or not an organization is subject to the Act. Section 2 of the Act defines “commercial activity” as:
    - “... any particular transaction, act or conduct or any regular course of conduct that is of a commercial character, including the selling, bartering or leasing of donor, membership or other fundraising lists”

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**Requirements of PIPEDA**

- **If a charity or not for profit organization determines that it is subject to PIPEDA, then it must comply with part 1 of PIPEDA**
- **Part 1 of PIPEDA incorporates the CSA “Model” code for the Protection of Personal Information (The Model Code)**
- **The Model Code was created to establish a voluntary national standard for the protection of personal information; compliance with the Model Code was strictly voluntary and there were no sanctions imposed upon an organization that did not comply with the Model Code**

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- **It is the position of the Privacy Commission that collecting membership fees, organizing club activities, compiling membership lists, mailing out newsletters, and fundraising are not considered commercial activities**
- **Some clubs, such as many golf clubs and athletic clubs, may be engaged in commercial activities which are subject to the Act**
- **Each charitable or non-profit organization must review its activities to determine whether or not it engages in commercial activities and thereby subject to PIPEDA**

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- **The Model Code incorporates 10 primary principles related to the collection, use and disclosure of personal information**
- **The following 10 principles have now been incorporated into PIPEDA and a breach of three principles may lead to sanctions under PIPEDA**

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**10 Principles**

**1. Accountability**

- An organization is responsible for personal information under its control and shall designate an individual or individuals in the organization who will be accountable for compliance with PIPEDA
- Organizations will also be responsible for information that it transfers over to third parties

**2. Identifying Purposes**

- An organization must identify the purposes for which personal information is collected and used at the time of, or before the collection of the personal information

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**5. Limited Use, Disclosure and Retention**

- Personal information shall not be used or disclosed for purposes other than those purposes for which it was collected except with the consent of the individual or as required by law

**6. Accuracy**

- Personal information collected shall be accurate, complete and up-to-date as is necessary for the purposes for which it is to be used

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**3. Consent**

- The consent of the individual providing personal information is required at or before the collection of the personal information
- The form of consent (i.e. expressed or implied) will depend on the sensitivity of the information that the organization collects

**4. Limited Collection**

- The collection of personal information shall be limited to that personal information which is necessary for the purposes identified by the organization and shall be collected by fair and lawful means only

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**7. Safeguards**

- Personal information shall be protected by security measures appropriate to the sensitivity of the information
- Organizations should ensure that they have both physical security measures in place i.e. locked filing cabinets and technical security measures in place i.e., fire walls and encryption

**8. Openness**

- An organization shall make readily available to individuals, specific information about its policies and practices related to the management of personal information including but not limited to:

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- The name or title, and the address of the person who is accountable for the organization's policies and practices
- The means of gaining access to personal information held by the organization
- A description of the type of physical information held by the organization, including a general account of its use

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**What Happens If There Is Non-compliance?**

- An individual who has concerns that an organization is not complying with PIPEDA may do the following:
  - Complain to the Privacy Commissioner
  - The Privacy Commissioner may attempt to mediate the complaint
  - The Privacy Commissioner may also make recommendations. However, the recommendations are not binding
  - If the matter remains unresolved, the complainant or Privacy Commissioner can make an application to the Federal Court

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**9. Individual Access**

- Upon request, an individual shall be informed of the existence, use and disclosure of his or her personal information; shall be given access to that information; shall be given the opportunity to challenge the accuracy of that information and have it amended if necessary

**10. Challenging Compliance**

- An individual shall be entitled to address a challenge concerning compliance with the principles to the designated information officer or individual (See Principle No. 1)

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- Federal Court may:
  - Order the organization to correct its practices
  - Order the organization to publish a notice of any action taken or proposed to be taken to correct the problem
  - Award damages against the organization

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**How Can an Organization Comply with PIPEDA?**

- Following are some basic recommendations to assist in complying with PIPEDA:
  - Appoint a compliance officer or officers who will be responsible for compliance by your organization
  - Carry out a privacy audit; review impact of privacy principles on your specific organization

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**Concluding Comments**

- Once personal information is obtained, it is a valuable commodity
- PIPEDA is designed to ensure that no inappropriate use of such personal information is made
- Compliance with PIPEDA is mandatory
- Failure to comply will lead to possible sanctions and a loss of credibility

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- Develop a privacy policy, ensure that individuals are aware of the policies and practices relating to an organization’s management of personal information
- Revise your contracts; each organization should ensure that personal information that is transferred is protected by contractual means
- Ensure consent; the type of consent that an organization obtains, will depend on the sensitivity of the information the organization collects
- Develop appropriate security measures; both physical and technical security measures
- Maintaining ongoing compliance; compliance with PIPEDA is not a one time occurrence

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- Although a charity may not be subject to PIPEDA, it is still important for the charity to adhere to the underlying privacy principles, as donors and members expect charities to recognize an individual’s right to privacy
- For these reasons, it is still recommended that charities have a privacy policy and implement the privacy policy to provide all the safeguards as standardized in PIPEDA

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**An Explanation of Bill C-250  
(Hate Propaganda)**

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**By Bruce Long, B.A., LL.B.**  
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**Note: See Church Law Bulletin #2 at [www.Churchlaw.ca](http://www.Churchlaw.ca) for more details**

**Sections 318 and 319 of the *Criminal Code*  
Will Read**

**Section 318 - Hate Propaganda**

**Advocating genocide**

- (1) Every one who advocates or promotes genocide is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.
- (2) In this section, “genocide” means any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely,

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- (a) killing members of the group; or
- (b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.
- (3) No proceeding for an offence under this section shall be instituted without the consent of the Attorney General
- (4) In this section, “identifiable group” means any section of the public distinguished by colour, race, religion (or) ethnic origin or sexual orientation.

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**Section 319**

- (1) Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of
  - (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
  - (b) an offence punishable on summary conviction.
- (2) Every one who, by communicating statements, other than in private conversation, willfully promotes hatred against any identifiable group is guilty of
  - (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
  - (b) an offence punishable on summary conviction

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(3) No person shall be convicted of an offence under subsection (2)

(a) if, he establishes that the statements communicated were true;

(b) if, in good faith, he expressed or attempted to establish by argument an opinion on a religious subject or an opinion based on a belief in a religious text;

(c) if, the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true; or

(d) if, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred toward an identifiable group in Canada

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(4) Not applicable

(5) Not applicable

(6) No proceeding for an offence under subsection (2) shall be instituted without the consent of the Attorney General.

(7) In this section,

“communicating” includes communicating by telephone, broadcasting or other audible or visible means;

“identifiable group” has the same meaning as in section 318;

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“public place” includes any place to which the public have access as of right or by invitation, express or implied;

“statements” includes words spoken or written or recorded electronically or electro-magnetically or otherwise, and gestures, signs or other visible representations.

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**Notes**

- Are two separate offences – “communicating statements” and “promoting hatred”
- The “communicating statements” offence does not require Attorney General consent nor does it have 4 statutory defences
- Both offences allow for arrest however, it must comply with S.495 of the *Criminal Code*

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- The “promoting hatred” offence has 4 defences:
  - Truth
  - Good faith religious opinion
  - Public benefit
  - Removal of hatred and it requires Attorney General consent
- “Communicating statements” offence can result in a conviction even if 4 defences are present

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- Identifiable group – meaning of “orientation” is unclear. If it includes “inclination” and/or “actions” may protect polygamists, bisexuals, pedophiles or child pornographers
- Passages in Koran, Torah, Bible, etc. may be designated as promoting hatred
- “Communicate”: includes all means of disseminating information
- The religious good faith defence has not succeeded in Canada

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- “Promoting hatred” may only require willful blindness
- Freedom of religion is relative to equality rights of minorities
- Defences to “communicating statements” offence include:
  - Not stir up hatred
  - Not in public place
  - Not lead to danger to public or property
  - Victim criticized for another reason

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**Suggestions**  
**Suggestions until the law is settled:**

- Avoid public criticisms of identifiable groups or its activities
- Limit opinions to private conversations
- Continue to express views to M.P.s
- If targeted or investigated, rely on constitutional right to remain silent. Inasmuch as offence is directly related to intention and motive, silence is usually preferable at initial stages

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**Same Sex Marriages - The Legal Context,  
Including Human Rights Issues and What  
Churches Can Do in Response**

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and Mervyn F. White, B.A., LL.B.  
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**A. INTRODUCTORY COMMENTS**

- The purpose of this presentation is to:
  - Provide a summary of recent developments in the law to date on same sex marriage
  - Offer preliminary advice on how churches can ensure that they are in compliance with recent legal developments
- See Charity Law Bulletin #31 at [www.charitylaw.ca](http://www.charitylaw.ca) for more details
- This area of law is in a state of flux and is highly controversial. As such, the comments that follow are of a tentative nature and are subject to change as this evolving area of the law unfolds

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**B. OVERVIEW OF TOPICS**

- The Legal Framework regarding same sex marriages
  - Case law developments
  - Proposed federal legislation
  - Impact of Bill C-250 (Hate Crimes) on same sex marriage issues
  - Impact of human rights legislation

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- What churches and religious charities can do in response
  - The importance of constitutional documents
  - Review of existing constitutional documents
  - Conducting a legal audit
  - Education of clergy concerning their legal rights

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**C. THE LEGAL FRAMEWORK REGARDING SAME SEX MARRIAGE**

**1. Recent Case Law Developments Regarding Same Sex Marriage**

- *Vriend v. Alberta* [1998] – Supreme Court of Canada
  - The exclusion of “sexual orientation” as a protected ground of discrimination under the *Alberta Individual’s Rights Protection Act* is unconstitutional

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- *M. v. H.* [1999] – Supreme Court of Canada
  - The opposite sex definition of “spouse” under the support provisions of the *Family Law Act* (Ontario) is unconstitutional
- *Hall (Litigation guardian of) v. Powers* [2002] – Ontario Superior Court
  - In its decision, the court stated that there was “...no...single position within the Catholic faith community” in relation to same sex couples notwithstanding the traditional teaching of the Catholic Church

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- Recent cases that have challenged the constitutional validity of the opposite-sex requirement of marriage
  - B.C. case of *Equality for Gays and Lesbians Everywhere* (EGALE) [2003] British Columbia Court of Appeal, and
  - Ontario case of *Halpern v. Canada (Attorney General)* [2003] Ontario Court of Appeal
    - In the above cases the respective Courts of Appeal ruled that the existing common law definition of marriage as the “union of one man and one women” is unconstitutional
  - Neither the *Halpern* nor the *EGALE* cases have been appealed to the Supreme Court of Canada

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- *Catholic Civil Rights League v. Hendricks* [2004] Quebec Court of Appeal
 

**Trial decision:**

  - The statutory opposite-sex requirement for marriage in Quebec violates s. 15(1) of the Charter
  - This finding was appealed to the Quebec Court of Appeal, but quashed
  - Same sex marriage still legal in Quebec
- Section 15 of the Canadian Charter of Rights and Freedoms does not specifically guarantee equality based on “sexual orientation” but the courts have found analogous grounds to those protected in section 15

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**2. Proposed Federal Legislation**

- In the summer of 2003, the federal government confirmed that it would not appeal the decisions of the Courts of Appeal in B.C., Ontario and the Quebec cases referenced earlier
- Proposed federal legislation was prepared by the federal government in the summer of 2003
- In October 2003, the federal government submitted its factum to the Supreme Court of Canada in support of a reference to determine the constitutionality of its draft legislation recognizing the union of same sex couples

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- On January 27, 2004, the federal government amended the reference to the Supreme Court of Canada to include a question concerning the constitutionality of limiting marriage to persons of different sex
- The actual wording of the proposed draft legislation entitled *Proposal for an Act Respecting Certain Aspects of Legal Capacity for Marriage for Civil Purposes* is as follows:
  - Section 1: “Marriage, for civil purposes, is the lawful union of two persons to the exclusion of all others.”
  - Section 2: “Nothing in this Act affects the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs.”

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- Section 2 does not establish a new right, it only recognizes what is assumed to be an existing right
- Changes to other federal statutes will also be made as a result of the new legislation
- Same sex marriage reference to be heard by the Supreme Court of Canada in early October 2004
- For further details see [http://canada.justice.gc.ca/en/news/nr/2003/doc\\_30946.html](http://canada.justice.gc.ca/en/news/nr/2003/doc_30946.html)

**3. Impact of Bill C-250 (Hate Crimes) on Same Sex Marriage Issues**

- When considering the topic of same sex marriage, churches need to be aware of Bill C-250 (Hate Crimes) [See presentation by Bruce Long]

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- Statements opposing same sex marriage might in some situations be considered as a hate crime offence
- Bill C-250 was given Royal Assent on April 29, 2004

**4. Impact of Human Rights Legislation**

a) *The Human Rights Code*

- Part 1 of the *Human Rights Code* enumerates areas in which individuals have the right to be treated “equally” and without discrimination

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- **Section 1 states as follows regarding the provision of services:**  
Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, same-sex partnership status, family status or disability
- **Section 5 of the *Human Rights Code* states the following regarding employment**  
5(1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status or disability

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- However, section 24 of the *Human Rights Code* permits discrimination to occur in the context of employment where:
  - The nature of the employment requires the discrimination
  - The qualification is a reasonable and bona fide qualification for the employment
  - Example: A requirement that a minister subscribe to a church’s Statement of Faith and charitable objects

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- **Section 11(1) of the *Human Rights Code*:**  
Extends the prohibition of discrimination into areas that are not contemplated by Section I of the *Human Rights Code*, where the discrimination results in the exclusion of an “identifiable group” as set out in the *Human Rights Code*, except generally when the requirement, qualification or factor is reasonable and bona fide in the circumstances
- **Section 18 of the *Human Rights Code*:**  
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

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b) **The *Canadian Human Rights Act***

- **Section 3 defines “prohibited grounds of discrimination” as follows:**  
For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.
- **Section 5 defines “discriminatory practice” as follows:**  
5. It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public
  - (a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or

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(b) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination.

c) Recent key human rights decisions

- *Trinity Western University v. British Columbia College of Teachers* (2001), Supreme Court of Canada held:
 

“The freedom to hold beliefs is broader than the freedom to act on them. The freedom to exercise genuine religious belief does not include the right to interfere with the rights of others.”

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- *Ontario (Human Rights Commission) v. Brillinger* [2002] – Ontario Superior Court
  - In furtherance of his religious beliefs, the owner of a printing shop felt he could not assist in the printing and distribution of information intended to spread the acceptance of homosexual lifestyles. However, he had not refused service to homosexual customers
  - In finding the owner in violation of the *Human Rights Code* the court upheld the “right to be free from discrimination based on sexual orientation in obtaining commercial services”

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**D. WHAT CHURCES AND RELIGIOUS CHARITIES CAN DO IN RESPONSE**

1. The Importance of Constitutional Documents

a) The legal nature of religious organizations

- Churches and other religious organizations are a voluntary association of persons who come together for a collective purpose as reflected in their respective governing agreement, namely their constitution
- A church constitution is a civil law document that can only reflect church law if it is made a part of the church constitution

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b) The need for churches and religious charities to clearly articulate their identity and beliefs through a constitution

- Since a church is nothing more than what the individuals forming it decide it to be, it is essential for churches to clearly state what they believe and, where possible, relate those beliefs to Scripture
- If the church fails to articulate what it is and what it believes, it will be left up to the courts to determine it on behalf of the church. The church may then be left more vulnerable to challenge under proposed federal legislation, the *Human Rights Code* and Bill C-250

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- The way in which the church articulates what it believes is through the church constitution
- For unincorporated churches, a constitution is usually a single document that is neither issued nor sanctioned by the government
- For incorporated churches, the constitution usually consists of a collective of the following documents:
  - Letters patent
  - General operating by-law
  - Policy Statements

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**2. Possible Options Regarding Specific Constitutional Documents**

- In light of recent changes in the law, churches and other religious organizations can take the following steps

a) **Statement of Faith**

- A Statement of Faith should always be part of the constitution of a church
- Scripture is open to differing interpretations. A more literal and/or orthodox interpretation would likely be more consistent with a position not in support of same sex marriage

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- If applicable, the church’s Statement of Faith should reflect the church’s theological belief in a literal and/or orthodox interpretation of Scripture
- General Scriptural passages such as those contained in the Apostle’s Creed can be inserted in the Statement of Faith
- However, Scriptural passages that may be construed as promoting hatred against an identifiable group may leave the church open to civil and even criminal liability

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- According to the case of *Owens v. Saskatchewan (Human Rights Commission)* [2002] (Sask. Q.B.) Scriptural references may be found to be promoting hatred

b) **Charitable objects**

- The church’s charitable objects are set out in its letters patent and should clearly indicate a religious purpose with references, where possible, to Scripture, i.e. “propagating the Gospel of Jesus Christ”
- The church’s charitable objects should also make reference to upholding the church’s Statement of Faith, where applicable

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**c) General operating by-law**

- The general operating by-law should define membership
- Conditions for church membership could include:
  - Adherence to the church’s constitution and its Statement of Faith
  - Members would be subject to church authority
  - A requirement to sign a membership statement by a member indicating they agree to comply with the church constitution and its Statement of Faith

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- Individuals involved in or leading church ministries or programs, as well as key employees, could collectively be required to be members
- The by-law should also have a provision authorizing the directors to implement operating policies for the church, together with an effective discipline procedure

**d) Policy Statements**

- Policy Statements can be of assistance in articulating a practical manifestation of the church’s beliefs

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- Churches should ensure that their Policy Statements make reference to being applied in accordance with the church’s Statement of Faith, where applicable
- Policy Statements must be prepared in a manner that is consistent with applicable human rights legislation
- Examples of the types of Policy Statements that a church might adopt with regard to same sex marriage are as follows:
  - A policy on marriage including the following, where applicable:

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- If the church does not support same sex marriage in accordance with a literal and/or orthodox interpretation of Scriptures, the policy should contain a statement recognizing marriage as a holy sacrament of the church and defining marriage as being between one man and one woman in accordance with its Statement of Faith
- Clergy should be required to subscribe to the church’s constitution, including its Statement of Faith
- Marriage can only be solemnized by clergy of the local church or other clergy approved by the church who have subscribed to the Statement of Faith and constitution of the church

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- The clergy is confirmed to have the right to decide whether or not he or she wishes to proceed with solemnizing a marriage if doing so would be contrary to his or her religious beliefs

– A facility use policy providing for the following:

- Restricting use of church facilities to church programs and/or members and for purposes which are consistent with the Statement of Faith and constitution of the church
- Since a church can discriminate in terms of membership and services per s. 18 of the *Human Rights Code*, a church may restrict the use of the facilities to only those holding membership status

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- If church facilities are restricted for use by members, a church that does not support same sex marriage may have the ability to prohibit the use of its facilities for conducting same sex marriages by non-members and members alike
- However, such facility use policies must be prepared in a manner consistent with the requirements of the *Human Rights Code* and therefore cannot exclude an “identifiable group”
- Churches are cautioned to draft their Policy Statements utilizing neutral wording where possible and avoid negative or pejorative wording or wording that refers to an “identifiable” group

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- Churches are cautioned against implementing conduct or lifestyle statements which may be construed as discriminating against an identifiable group contrary to the *Human Rights Code*
- Churches should ensure that their Policy Statements are enforced in a consistent manner, otherwise, the following may occur:
  - The church may waive its ability to enforce
  - The church may be vulnerable to allegations of discrimination for inconsistency in enforcement

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- An example is where the church neglects to enforce provisions in a conduct statement with regard to a particular activity, i.e. prohibition on drinking alcohol, but enforces prohibition against adultery
- The church needs to set out a procedure of church discipline reflecting principles of fairness and natural justice. For further details, see an article on church discipline at <http://www.carters.ca/pub/article/church/1995/disciplin.pdf>

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3. Review of existing constitutional documents

- If the church has an existing constitution, it should be reviewed to determine whether the church's documents are consistent with recent developments in the law
- The church should determine if its Statement of Faith and Policy Statements are part of its constitution

4. Conducting a legal audit

- Given the severity in liabilities for non-compliance with changes in the law, churches should consider a legal audit of all of their policies and constitutional documents, as well as of their liturgies and teaching materials

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- The purpose of a legal audit would be to:
  - Review whether the church's existing constitutional documents may be inconsistent with applicable legal requirements under Bill C-250, the *Human Rights Code* and proposed federal legislation on same sex marriage
  - Review whether the documents reflect any discrimination or promotion of hatred against an identifiable group

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5. Education of clergy concerning their legal rights

- It would be prudent for local churches and/or denominations to educate the clergy of their legal rights in relation to the fulfillment of their ministerial duties and the operations of the church as a whole
- The draft federal legislation recognizes the freedom of officials of religious groups to refuse to perform marriages contrary to their religious beliefs, but does not recognize a similar freedom for religious groups as contemplated by *Halpern*
- It is therefore important for local churches and/or denominations to provide education on the rights of both the clergy as well as the rights of the church in general

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**F. SUMMARY COMMENTS**

In summary, in light of the recent developments in the law concerning same sex marriages, churches should consider some or all of the following:

- Where applicable, a church should articulate its adherence to a literal and/or orthodox interpretation of Scripture
- This adherence could be reflected in the constitutional documentation of the church, including its charitable objects, and should, where applicable, encompass a clear religious purpose with reference to upholding the Statement of Faith of the church

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- Churches should avoid Scriptural references in its Statement of Faith where such Scriptural passages may be construed as promoting hatred against an identifiable group
- The church’s general operating by-law should define membership, authorize Policy Statements and establish a procedure for church discipline
- Individuals involved in or leading church ministries or programs, as well as key employees, should also be required to be members

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- Policy Statements may be of assistance in articulating a practical manifestation of the beliefs of a church
- If the church does not support same sex marriage in accordance with a literal and/or orthodox interpretation of Scriptures, a Policy Statement on marriage should contain a statement recognizing marriage as a holy sacrament of the church and defining marriage as being between one man and one woman in accordance with its Statement of Faith
- Prepare an appropriate facility use policy to restrict use of church facilities to church programmes and /or members

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- Policy Statements should be drafted using neutral wording where possible and avoid negative or pejorative wording or wording that refers to an “identifiable” group
- In preparing Policy Statements, churches will need to prepare them to be in compliance with legal developments regarding the solemnization of same sex marriages, Bill C-250 and the *Human Rights Code*
- Churches are cautioned against implementing conduct or lifestyle statements which may be construed as discriminating against an identifiable group contrary to the Human Rights Code

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- Churches must ensure their Policy Statements are enforced in a consistent manner
- A legal audit should be considered for existing and proposed policies and constitutional documents to review whether those documents are in compliance with recent developments in the law
- Local churches and/or denominations should educate their clergy regarding the legal rights of clergy as well as the church

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