

Thoughts about admissions

The following thoughts are formed on the basis of knowledge gained from seminars attended, speaking with other private school leaders and readings about the management of competing human rights. References are listed below.

Currently, most of our schools have society membership policies that state something like this:

All persons 18 years of age or older who are communicant members of a Canadian Reformed Church, or another church with whom ecclesiastical fellowship is maintained and who subscribe to the Three Forms of Unity as referred to in the Letters Patent, are eligible for membership in the association, provided that a husband and a wife constitute one member for the purpose of this by-law.

These are, in turn, followed by an enrolment policy that reads something like this:

Enrolment in the School is open to the children of the Society membership. All other enrolment is subject to the approval of the Board of Directors.

In reading the two, one will note a marked distinction. A school's membership is limited to a well-defined group of people, based on denomination and religious creed. The definition for enrolment is much more loose since there is no written definition about what a board will use to approve or refuse non-member enrolment. This practice could be dangerous for our schools.

In the Human Rights Code, there is specific protection for religious institutions and schools to operate free from charter infringement- even when the guidelines used for membership mean that certain protected segments of the population are discriminated against. This protection is under 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.** R.S.O. 1990, c. H.19, s. 18; 2006, c. 19, Sched. B, s. 10.ⁱ (Emphasis added)*

In other words, Christians may restrict the membership to Christians without fear of litigation, because religion is a protected right.

In current case law (which is an important component of what Human Rights Commission tribunals look atⁱⁱ) This section was tested when, in 2001, the Supreme Court of Canada ruled in favour of Trinity Western University (TWU) and against the B.C. College of Teachersⁱⁱⁱ.

It is worth the time taken to give a brief summary of that case, because it shows why a defined admission policy is a protection to an institution. TWU makes both their students and faculty sign an agreement that has them promise, in a ‘Community Covenant Agreement’, not to engage in behaviour that is against biblical principles, including homosexual relations.^{iv} The B.C. College of Teachers wanted to disallow TWU from obtaining permission to grant teacher training certificates based on the fact that TWU was discriminating against homosexuals- a protected minority in the charter.^v

The case made its way up to the Supreme Court of Canada, where the highest court in our land stated:

The diversity of Canadian society is partly reflected in the multiple religious organizations that mark the societal landscape and this diversity of views should be respected.^{vi}

And:

Even though the requirement that students and faculty adopt the Community Standards creates unfavourable differential treatment since it would probably prevent homosexual students and faculty from applying, one must consider the true nature of the undertaking and the context in which this occurs.^{vii}

In other words, even though the court recognized that homosexuals would not have equal opportunity for enrolment, TWU was not violating the Charter because who the school was for- the context- was well defined.

Section 18 was also used by TWU to win their bid to start a certified law school. Many provincial bar societies refused to recognize the degree because of the Community Covenant. However, a Supreme Court judge in Nova Scotia, ruled in favour of TWU stating:

People have the right to attend a private religious university that imposes a religiously based code of conduct.... That is the case even if the effect of that code is to exclude others or offend others who will not or cannot comply with the code of conduct. Learning in an environment with people who promise to comply with the code is a religious practice and an expression of religious faith. There is nothing illegal or even rogue about that.... Like churches and other private institutions, [TWU] does not have to comply with the equality provisions of the Charter. It has not been found to be in breach of any human rights legislation that applies to it. ... The Charter is not a blueprint for moral conformity. Its purpose is to protect the citizen from the power of the state, not to enforce compliance by citizens or private institutions with the moral judgments of the state.^{viii}

Though this TWU case is set to go before the Supreme Court of Canada for final appeal, the long and short of this is that, in the eyes of case law, it is perfectly legitimate for a school to have a policy that is restricted by the adherence to a stated religious creed. Even if it means the exclusion of groups specifically listed in the Charter. Things get more tricky when enrolment is less defined.

H.S. vs. The Private Academy is a case that has proceeded through the Human Rights tribunal in the summer of 2017. In it a community Christian school denied enrolment to a preschool student, because the parents of the child were in a same sex relationship. While the identity of the school is not

specifically known (due to an anonymity order), the case has progressed through the tribunal process and received a full hearing. Section 18 of the code was not enough to protect the school from going through the process, because, “this case raises complex legal issues that are best determined with the benefit of a full evidentiary record.”^{ix}

A difference between the TWU case and the one above is that enrolment in community Christian schools is typically fairly open, whereas TWU was very specific in defining the practices of those attending and why (and they did so in a manner that was decent and respectful). When those applying to the university could not sign the agreement, TWU simply lets them know that they were not a good fit for the school. In contrast, in most community Christian schools, as long as parents agree to promote living a Christian home life, and attend a bible believing church, they can be admitted.^x In this case H.S. argued that there is no agreement among the wider Christian community about what that looks like. Since this is the case, H.S. argued, enrolment is, for all intents and purposes, up to the board’s discretion in community Christian schools.

This summer the Private Academy won its hearing. They one because they were not ‘most community Christian schools’. In fact, they operated on a covenantal model of education. While it is true that its definition of covenant is different than most League schools, it is familiar. The Private Academy specifically spelled out who their school was for and required that parents who sent their children to the school pledged to live by the model. Its primary purpose was “assisting and supporting parents relative to their responsibility before God,” and, “They did not want to confuse children by teaching something at odds with what parents might teach in the home.” This model had also been tested at other times and in other situations. Other applications had been refused because parental lifestyle did not reflect the school’s core values.^x

The H.S. vs The Private Academy case cited above proves that ‘board discretion’ is not specific enough to protect a Christian school from the expense of a full Human Rights Tribunal hearing. Section 18 of the Act was no protection from having it proceed, though it did protect them from damages because they were specific about who they were for, and consistent in how they applied the rules.

So, what does this mean? It means that schools need to be specific about who they are for and why they are for those people. This is why the Toronto District School Board can run a racially segregated school - they are set up to serve a specific community. What that community looks like, and the purpose of the school are both clearly laid out.^{xi} If a Jewish person were to try to enroll a Jewish child in this TDSB school, they would be denied; not because the child is Jewish, but because the child is not from Africentric origin. The good faith phrasing makes all the difference. Our schools would do well to set their admission policies up the same way.

A school does well to clearly define what families are allowed to enrolled children outside of Society membership and to be consistent and clear in their policy. A school has to be able to say that enrolment is declined because the applicant does not fit a clearly defined constituency for whom the school operates. If it is left up to the Board’s discretion then the Board may not be protected by Section 18. The phrase, ‘their discretion’, is too vague and subject to change. A school should have a well-defined policy that discriminates in a positive way.

Below is an example of what a positively discriminatory policy may look like:

Enrolment in the school is open to the children of the Society membership.

Those applying from outside the Society membership must be willing to acknowledge the supremacy of The Bible as God’s own, infallible word. They must also agree to sign an agreement that the applicants household will both live and promote the same lifestyle as is lived and promoted by those belonging to the Society membership. Namely that they work to promote the fruit of the Spirit in their lives and in the lives of their children (Galatians 5:22-23) and attend church with the same regularity as Society members. Applicants for enrolment must also agree to refrain from practices that are biblically condemned. These condemned practices include but are not limited to habitual drunkenness (Eph. 5:18), swearing or use of profane language (Eph. 4:29, 5:4; Jas 3:1-12), harassment (Jn 13:34-35; Rom. 12:9-21; Eph. 4:31), all forms of dishonesty including cheating and stealing (Prov. 12:22; Col. 3:9; Eph. 4:28), abortion (Ex. 20:13; Ps. 139:13-16), involvement in the occult (Acts 19:19; Gal. 5:19), and sexual sins including premarital sex, adultery, homosexual behaviour and viewing of pornography (I Cor. 6:12-20; Eph. 4:17-24; I Thess. 4:3-8; Rom. 2:26-27; I Tim. 1:9-10).

Non-Society member applications will also be assessed against the needs of students requesting enrolment and the school’s ability to meet those needs adequately, while still meeting the needs of the children of Society members.

Successful non-Society member applicants will also be subject to a non-member tuition rate as assessed by the Board in accordance to Board Policy ###.

This suggestion is based on a contract that has already withstood judicial scrutiny,^{xii} and it clearly defines who the school is for. It allows the Board to have a clearly defined basis upon which they will be able to decide which families are able to send their children, and which families are not a good fit. Because it is clear who the school is for, and the creed the school follows, Section 18 of the Human Rights Code allows for the restrictions even though they may discriminate against a protected group. In addition, a policy such as this protects the Board from being swayed by personal feelings about a family and/or a negative response from Society members.

There is much more that could be written on this topic, and I hope that this paper will work to form a basis upon which schools think about what best practices might be in regard to admission policies.

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ⁱ Human Rights Code, Part 18: <https://www.ontario.ca/laws/statute/90h19#BK20>

ⁱⁱ <http://www.ohrc.on.ca/en/policy-competing-human-rights/5-key-legal-principles-20>

ⁱⁱⁱ <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1867/index.do>

^{iv} <https://twu.ca/studenthandbook/twu-community-covenant-agreement.pdf>

^v Human Rights Code, Part 1: <https://www.ontario.ca/laws/statute/90h19#BK20>

^{vi} Par. 33: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1867/index.do>

^{vii} Par. 34: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1867/index.do>

^{viii} <http://news.nationalpost.com/full-comment/kelly-mcparland-crusade-against-trinity-western-law-school-runs-up-against-an-intelligent-judge>

^{ix} <http://www.canlii.org/en/on/onhrt/doc/2015/2015hrto1209/2015hrto1209.html?resultIndex=1>

^x <https://www.canlii.org/en/on/onhrt/doc/2017/2017hrto791/2017hrto791.html>

^{xi} http://www.miltonchristianschool.com/Enrollment_Forms_-_2015-2016_1.pdf,
<http://www.ccsdrayton.org/enrolment-policy/4533824387>,
http://huronchristianschool.ca/files/AdmissionsPolicy_197.pdf,

^{xii} <http://schoolweb.tdsb.on.ca/africentricschool/Home.aspx>

^{xiii} <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1867/index.do>