



# Justice Centre for Constitutional Freedoms

October 14, 2014

Lloyd Schreyer, Chair  
Board of Governors  
Red River College  
C719A - 2055 Notre Dame Avenue  
Winnipeg, MB, R3H OJ9

Dear Mr. Schreyer:

I write on behalf of Dr. David Woytowich, P. Eng., an instructor in the Civil Engineering Technology Department (CET) at the Notre Dame campus of Red River College (RRC).

## **Background**

Dr. Woytowich was a volunteer Director on the Chaplaincy Care Ministry Board from 2006 until the Chaplaincy was abruptly terminated on July 2, 2014. This Ministry was established at RRC in May 1995 to serve both students and staff, and has provided care and service to RRC on a volunteer basis for over 19 years. The Chaplaincy was terminated by Mr. David Rew (then Vice President of Student Affairs and Planning, and now Interim President and CEO) without consultation or discussion with the Chaplains or their Board. This abrupt termination has had a negative impact on the RRC students and staff who had been receiving counselling and other forms of spiritual assistance and guidance from the Chaplains.

Dr. Woytowich and other RRC staff members from CET started a Christian Staff Fellowship (CSF) in 2008. This group has expanded to include RRC staff members from other departments. Each month, the CSF holds a lunch meeting where they enjoy fellowship and spiritual support under the guidance of a volunteer chaplain, Ms. Judy Johnson.

Through these meetings, members of the CSF have received valuable spiritual and personal support, which has strengthened them in facing difficulties such as the deaths of colleagues, and other periods of personal distress. Critical to the strength and support these RRC staff have received from the CSF has been the monthly use of a convenient and suitable boardroom at RRC, and the spiritual care of Ms. Johnson.

When Dr. Woytowich and other CSF members learned of RRC's decision to change the spiritual support model at RRC, and no longer utilize the services of the volunteer Chaplains on RRC's behalf, the CSF decided it would be wise to request permission to continue meeting under the spiritual care of Ms. Johnson as a "Visiting Chaplain". Dr. Woytowich, on behalf of the CSF, sent a request letter to then-President Stephanie Forsyth, dated August 22, 2014. The CSF did not, and does not, seek to

challenge the RRC's new spiritual support model. Rather the CSF and its members believe that their activities complement RRC's desire to provide spiritual support to all of its students and staff, in the manner that most benefits the individuals receiving such support.

On August 27, 2014, Cindee Laverge, then Dean of Student services and now Acting Vice President of Student Services and Planning, responded to Dr. Woytowich's request by email, as follows:

Dave

Your letter regarding a "Visiting Chaplain" at Red River College has been forwarded to me. You have shared that the Chaplains have previously provided this type of support for your group. When the chaplaincy service was approved by the College in the mid-1990s, the intent of the support service was to provide one-on-one spiritual guidance for students seeking this type of support. It was never intended to be a support for staff. Over time the Chaplaincy office expanded the service to staff, although this was never discussed with the College.

You will have seen in yesterday's All Staff Announcements that there is spiritual support available for staff.

Should you have any further questions or concerns regarding the EFAP model and the Christian Fellowship Group, please contact Shaneesa Ferguson at 632-2951,

Cindee

Ms. Laverge's assertion that the Chaplains were "never intended to be a support for staff," is contradicted by the College Management Committee Minutes of May 31, 1994.

The cause of concern, however, is not Ms. Laverge's misapprehension of the facts, but rather the decision to prohibit Dr. Woytowich and other members of the CSF from continuing to meet under the spiritual guidance of Ms. Johnson. Concurrent with Ms. Laverge's response, Dave Rogalsky, Director of Student Services, ordered the cancellation of all reservations for Boardroom D102 made in the name of Ms. Johnson on behalf of the CSF group. The CSF has met in Boardroom D102 for the past two years, but Dr. Woytowich has now been informed that the Boardroom is no longer available for staff outside of the Student Affairs department.

This letter is necessitated by RRC's denial of the CSF's request to continue to meet under the spiritual guidance of Ms. Johnson as a "Visiting Chaplain."

### **RRC's Legal Responsibilities**

RRC is a Crown agency under the oversight of the government of Manitoba. The Supreme Court of Canada has held in *Douglas/Kwantlen Faculty Assn. v. Douglas College*<sup>1</sup> that colleges such as RRC are government under s. 32 of the *Canadian Charter of Rights and Freedoms*. This authority, along with numerous others, means that RRC must comply with the *Charter*.

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<sup>1</sup> *Douglas/Kwantlen Faculty Assn. v. Douglas College*, [1990] 3 S.C.R. 570.

One of the “fundamental freedoms” protected by the *Charter* in s. 2(a) is the “freedom of conscience and religion”. The foundational principles of this freedom were laid down by the Supreme Court of Canada in *R. v. Big M Drug Mart Ltd.*:<sup>2</sup>

A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct. A free society is one which aims at equality with respect to the enjoyment of fundamental freedoms and I say this without any reliance upon s. 15 of the *Charter*. Freedom must surely be founded in respect for the inherent dignity and the inviolable rights of the human person. 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. But the concept means more than that.

Freedom can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. One of the major purposes of the *Charter* is to protect, within reason, from compulsion or restraint. Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others. Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.

What may appear good and true to a majoritarian religious group, or to the state acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view. The *Charter* safeguards religious minorities from the threat of "the tyranny of the majority".

In *Syndicat Northcrest v. Amselem*, the seminal case on the test for protection of freedom of religion, the Supreme Court stated:<sup>3</sup>

To summarize up to this point, our Court’s past decisions and the basic principles underlying freedom of religion support the view that freedom of religion consists of the freedom to undertake practices and harbour beliefs, having a nexus with religion, in which an individual demonstrates he or she sincerely believes or is sincerely undertaking in order to connect with the divine or as a function of his or her spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials.

Later in *Syndicat Northcrest*, the Supreme Court held that the freedom of conscience and religion is violated where 1) an individual can demonstrate that “he or she sincerely believes in a practice or belief that has a nexus with religion” and 2) where it is then demonstrated “that the impugned conduct of a

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<sup>2</sup> *R. v. Big M Drug Mart Ltd.*, [1985] 1 SCR 295, at paragraphs 94-96.

<sup>3</sup> *Syndicat Northcrest v. Amselem*, 2004 SCC 47 at para 46.

third party interferes with the individual's ability to act in accordance with that practice or belief in a manner that is non-trivial.”<sup>4</sup>

In addition to the requirement under the *Charter* that RRC not interfere with individuals' religious beliefs or practices, RRC also has an obligation under Manitoba's *Human Rights Code* not to discriminate against individuals on the basis of “religion or creed, or religious belief, religious association or religious activity”.<sup>5</sup> The *Code* specifically provides that “[n]o person shall discriminate with respect to any aspect of an employment or occupation, unless the discrimination is based upon bona fide and reasonable requirements or qualifications for the employment or occupation.”<sup>6</sup>

### **Staff Members' Rights**

Pursuant to RRC's *Use of Facilities* policy, the CSF group, as members of the college community, reserved meeting space in Boardroom D102, in which to hold their monthly times of fellowship and spiritual support. The evident concern of RRC for the spiritual care of students and staff, along with Counselling and Accessibility Services' and Diversity and Intercultural Services' responsibility for spiritual care, confirm that the CSF group are “Category A” users.

The personal decisions of the RRC staff members to continue to meet with the spiritual support of a Chaplain of their own choosing complements, and is entirely compatible with, RRC's desire to continue providing spiritual support to students and staff.

RRC's decision to terminate the volunteer work of the Chaplain chosen by RRC staff members cannot be justified as a cost-saving measure, because RRC has never paid money for this to begin with. More importantly, this decision violates the rights of RRC staff members under both the *Charter* and Manitoba's *Human Rights Code*.

Further, RRC has previously permitted the use of its facilities by staff and students for various religious and spiritual meetings and events, including aboriginal spiritual functions. RRC has no legal right, under the *Charter* or under the *Human Rights Code*, to discriminate.

The CSF has a right to use and meet in Boardroom D102, or another equally suitable room on campus.

The CSF also has a right to invite Ms. Johnson to chaplain their meetings. This right is protected not only by CSF's freedom of religion discussed above, but also by the *Charter* rights to freedom of association, freedom of peaceful assembly, and freedom of expression. Regarding the *Charter* s. 2(b) freedom of expression, the Supreme Court has recognized not only the right to speak but also the right of listeners to hear.<sup>7</sup> RRC violates this right by prohibiting the CSF from receiving the spiritual guidance and support of Ms. Johnson at their monthly meetings. In a similar vein, in *R v. Whatcott*,<sup>8</sup> the Alberta Court of Queen's Bench held that the University of Calgary violated the *Charter* freedom

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<sup>4</sup> Ibid at para 65.

<sup>5</sup> *The Human Rights Code*, C.C.S.M. c. H175, Section 9(2)(d).

<sup>6</sup> Ibid at section 14(1).

<sup>7</sup> *Harper v. Canada (Attorney General)*, 2004 SCC 33 at para 17.

<sup>8</sup> *R v. Whatcott*, 2012 ABQB 231.

of expression rights of a member of the public, banning him from campus for having peacefully distributed literature. Similarly, RRC has violated Ms. Johnson's expression rights by barring her from attending the CSF meetings. Further, Ms. Johnson herself has a legal right to be present at public institutions such as RRC, absent an express written policy that bars all non-students from setting foot on campus.

## Conclusion

Dr. Woytowich has made a simple request on behalf of the Christian Staff Fellowship (CSF) that they be permitted to continue meeting for fellowship and spiritual support under the spiritual care of Ms. Judy Johnson.

Dr. Woytowich and CSF have not asked RRC for its endorsement or support, as they fully understand that RRC does not endorse the beliefs and practices of any group which meets on campus for religious, cultural, spiritual, educational or other reasons. This is a matter of extending respect towards authentic diversity, which lies at the heart of the mission of every college and university. The activities of the CSF are not in any way contrary to RRC's new program of spiritual support, but rather are complementary.

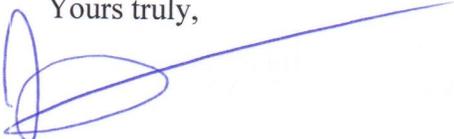
RRC's denial of this request, as set out in Ms. Laverge's August 27 email, violates all four of the *Charter* section 2 fundamental freedoms: freedom of conscience and religion; freedom of expression; freedom of peaceful assembly; and freedom of association.

RRC's denial is also illegal discrimination, in violation of Manitoba's *Human Rights Code*.

Given the above explanation of the rights of the CFS members and the responsibilities of RRC, we expect RRC to allow the CFS group, composed of staff from CET and other departments, to meet in Boardroom D102, or another equally suitable room, with the presence and spiritual guidance of Ms. Judy Johnson.

We request your response by Friday, October 31, 2014.

Yours truly,



John Carpay, B.A., LL.B.  
President  
Justice Centre for Constitutional Freedoms

cc. Dr. David Woytowich, P. Eng.  
Ms. Ruth Lindsey-Armstrong, RRC Board of Governors' Employee Member  
Mr. David Rew, Interim President and CEO  
Ms. Cindee Laverge, Acting Vice-President of Student Services and Planning  
Mr. Marty Moore, Justice Centre for Constitutional Freedoms