

***MAKING THE CASE: 2SLGBTQ+ RIGHTS AND RELIGION IN SCHOOLS*, DONN SHORT, BRUCE MACDOUGALL & PAUL T. CLARKE (VANCOUVER: PURICH BOOKS, 2021)**

Debates about the rights of 2SLGBTQ+ students have occurred in schools and school boards across Canada, periodically roiling provincial politics. There have been a number of key human rights cases on the rights of trans students, harassment of 2SLGBTQ+ students in school, bullying, queer-friendly curriculum, and Gay-Straight Alliances (GSAs). In Manitoba, Ontario, Alberta, and British Columbia, provincial governments have considered or passed legislation protecting GSAs in schools and targeting bullying, including bullying against 2SLGBTQ+ students. This book provides an overview of this terrain, focusing on the well-being and safety of 2SLGBTQ+ students, especially as students' equality rights are brought into legal conflict with religious rights in the education system.

The authors provide an accessible survey of the main legal points of the conflict between freedom of religion and equality rights. They argue that the current jurisprudence provides for limits on religious rights. In particular, they provide a good account of cases such as *Syndicat Northcrest v. Amselem*, in which the Supreme Court set out criteria for claims of freedom of religion including proof that religious beliefs were sincerely held and consideration of the extent to which the proposed limits constituted a substantial interference with religious freedom.<sup>1</sup> The authors argue that this is an important point because religious rights are often presented as unlimited or determinative when they come into conflict with the rights of 2SLGBTQ+ students. In this sense, the book's overview of key points of case law serves as a political argument for 2SLGBTQ+ rights by discursively countering claims about unlimited religious freedom.

The book describes other important cases in which Canadian courts have found limits on religious freedom in relation to 2SLGBTQ+ rights claims. For example, there is a good discussion in *Saskatchewan (Human Rights Commission) v. Whatcott* on freedom of expression in which a Manitoba man had distributed flyers condemning homosexuality.<sup>2</sup> The Supreme Court ruled that religious freedom did not include the right to engage in hate speech. Although the book focuses on primary and secondary education, it also includes a discussion of the recent controversy over Trinity Western University's aim of creating a law school. Again, in this case, the Supreme Court ruled that religious rights did not trump equality rights.<sup>3</sup>

One strength of the book is its focus on education controversies in Western Canada, as well as other provinces. The authors describe the debates over Bill 24<sup>4</sup> and Bill 8<sup>5</sup> in Alberta as the Rachel Notley government proposed broad-ranging legislation which, among other things, would have permitted students to join GSAs without parental knowledge or consent while the successor Bill 8, passed by the United Conservative Party (UCP) government,

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<sup>1</sup> 2004 SCC 47.

<sup>2</sup> 2013 SCC 11.

<sup>3</sup> *Trinity Western University v Law Society of Upper Canada*, 2018 SCC 33.

<sup>4</sup> Bill 24, *An Act to Support Gay-Straight Alliances*, 3rd Sess, 29th Leg, Alberta, 2017 (assented to 15 December 2017), SA 2017, c 30.

<sup>5</sup> Bill 8, *Education Amendment Act, 2019*, 1st Sess, 30th Leg, Alberta, 2019 (assented to 18 July 2019), SA 2019, c 7.

limited the role of GSAs and eliminated the protections against disclosure of student participation to parents.

Another strength of the book is its attention to the concepts of intersectionality and categorization. Intersectionality is explained in an accessible way even though the authors' analysis of the cases and legislation does not necessarily include an explicitly intersectional approach. For example, the discussion of *Jubran v. Board of Trustees* in British Columbia,<sup>6</sup> in which a South Asian student was bullied and harassed by peers, does not consider the silence around the issue of race in the case. At the same time, the authors provide a good account of the ways in which law and legal claims require categorization and how categorization reinforces essentialist and absolutist definitions of sexuality and religion.

Throughout the book, the authors emphasize the importance of student voices and the ways in which these voices are marginalized or ignored in litigation and legislation. While they quote extensively from existing research, they also draw attention to the need for updated evidence from students on their needs in the education system. A good example of research that draws in the voices of students is Heather Shipley's article on post-secondary education, which incorporated interviews with students at Trinity Western University.<sup>7</sup> This type of research would shed further light on how rights controversies are experienced by those whose rights are most engaged by these legal debates, and yet who are uniquely voiceless, as these authors rightly emphasize.

This book has some important limits. The authors present their work as focusing on the legal and educational systems and, indeed, politics is left out of the analysis. This is understandable given that the goal of the book is to provide an accessible introduction to the facts and evidence on the limits of freedom of religion in Canada in relation to the human rights of 2SLGBTQ+ students, particularly in the secondary system. Nonetheless, it is important to understand that the cases and events presented in this book are occurring against a backdrop of increasing politicization of human rights, especially with the recent reassertion of right-wing populism. Populist politicians all over the world deploy their opposition to 2SLGBTQ+ rights as a weapon against progressive political forces with the goal of strengthening their electoral and political power. In the Alberta debate, it is clear that, for the UCP, the idea of parents' right to know about their children's involvement with GSAs in the schools was a dog whistle to the Christian Right in the provincial election.<sup>8</sup> The same occurred in Ontario with Kathleen Wynn's government reform of the sex education curriculum.

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<sup>6</sup> 2002 BCHRT 10.

<sup>7</sup> Heather Shipley, "Sites of Resistance: LGBTQI+ Experiences at Trinity Western University" (2020) 35:1 CJLS 111.

<sup>8</sup> Donn Short, Bruce MacDougall & Paul T Clarke, *Making the Case: 2SLGBTQ+ Rights and Religion in Schools* (Vancouver: Purich Books, 2021) at 68–74.

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There is nothing new about the Christian Right's opposition to 2SLGBTQ+ rights. This volume refers to the case of the Surrey book banning in which a teacher introduced gay-friendly reading material in Surrey schools, only to see the books banned by the school board.<sup>9</sup> Those with longer memories will remember the rise of the "moral majority" in the 1980s and their campaigns against "gay rights." This book argues passionately that children and youth should not be victimized, and that their voices and rights should be understood and recognized. Those looking for an accessible introduction to the complexities of religious rights and equality rights in Canada could do no better than to consult this volume.

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<sup>9</sup> *Chamberlain v Surrey School District #36*, 2000 BCCA 519.

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