

IN THE MATTER OF: The Human Rights Code, R.S.M. cap. H175

AND IN THE MATTER OF A COMPLAINT BETWEEN:

ESTHER SCHROEN

Complainant

-and-

STEINBACH BIBLE COLLEGE

Respondent

- and -

CANADIAN COLLEGE OF CHRISTIAN CHARITIES

Intervenor

REASONS FOR DECISION

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THE COMPLAINT

This case arises out of a complaint ("complaint") filed by Esther Schroen ("Schroen") with the Manitoba Human Rights Commission ("MHRC") dated August 1, 1991. Her complaint alleges that The Steinbach Bible College ("SBC") discriminated against her in that her employment was unreasonably terminated on the basis of religious belief, contrary to section 14(1) of the Human Rights Code ("the Code").

SBC filed a reply to the complaint outlining their position and stating that Schroen was terminated and that her termination was based on a bona fide and reasonable requirement or qualification for the employment in accordance with the Code.

On April 10th, 1997, I was designated to sit as a Board of Adjudication under the Code by the Minister of Justice, the Honourable V.E. Toews, Q.C. to hear and decide the complaint made by Schroen against SBC, The hearing commenced and evidence was presented in January and February, 1998.

Well in advance of the hearing, counsel for the Canadian Council of Christian Charities ("the Intervenor") applied for and was granted status in these proceedings. Counsel's appearance on behalf of the Intervenor was not objected to by either counsel for the other two parties, although some guidelines relating to his involvement, which are not germane to this decision, were agreed to by all the participants.

THE FACTS

At the commencement of the hearing the parties submitted an agreed statement of facts. These facts were tendered as Exhibit 2 and some of the relevant portions therein are as follows:

"6. The Complainant, although of Mennonite ancestry and formerly of Mennonite faith, having converted to the Mormon religion, is and was at all material time hereto a member of the Mormon faith.

7. The Respondent and each of the church groups who operate it and place an emphasis on the Christian faith, in particular Anabaptist Evangelicalism.

11. On or about June 10, 1991, the complainant was offered the position of Accounting Clerk in Finance and Business Administration at the Respondent's offices.

12. Subsequent to her hiring, the Respondent asked the Complainant to attend two days of preliminary training on June 11th and 18th prior to officially commencing her position on June 24, 1991. The complainant attended the preliminary training as requested.

13. On or about June 18th, 1991, the Respondent learned that the Complainant was a member of the Church of the Latter Day Saints, of the Mormon faith.

14. The following day, the Complainant was contacted by the Respondent and asked to attend to the office of Mr. Janzen, which she did. At that meeting, Mr. Janzen advised the Complainant that he would need to bring the information about the Complainant's religious background to the Respondent's Board of Directors for a decision as to whether her employment would continue.

15. On or about June 29, 1991, the Complainant was advised by Mr. Janzen that the Respondent's Board of Directors had decided to terminate her employment on the basis of religious non-conformity."

I will discuss what I found to be the other facts relevant to this matter under the heading, "The Evidence".

THE ISSUES

There were two issues to be determined in this case.

- (i) The first issue to be determined was whether or not there was discrimination under section 14(1) of the Code. If there was no discrimination then that is the end of the matter. If there was discrimination, then a second Issue must be dealt with.
- (ii) The second issue is whether or not the discrimination was based upon bona fide and reasonable requirements or qualifications for the employment or occupation.

THE EVIDENCE

Counsel for the Commission called 3 witnesses. The first witness was the complainant, Esther Schroen.

Ms. Schroen's evidence, from direct and cross-examination, was that her maiden name was Enns and that she grew up in the Winkler area of Manitoba. Her father was an active member of the Sumerfelder Church (Mennonite) and she was raised in that denomination. She attended Sunday services and was involved in youth group activities. She was also involved in the Mennonite Brethren through her friends at high school. After studying the Mennonite faith during preparation classes and making a commitment; she was baptized in the Mennonite faith when she was 16 years of age. In 1978, when she was 18 years of age, she married her husband in the Mennonite Church. Her husband was of the Lutheran faith at the time. Her married name is Esther Schroen. In 1979 or 1980, she couldn't remember exactly which year, she and her husband moved to Winnipeg. Upon moving to Winnipeg, she stopped attending the Mennonite Church and had no other church affiliation.

As a result of not attending a Mennonite congregation in Winnipeg, she received a letter from her former Church, advising her that her membership in the Mennonite Church would be terminated unless she joined a congregation in Winnipeg. As a result, within a year after receiving the letter from the Mennonite Church, she became, and is currently a member of The Church of Jesus Christ of Latter Day Saints, commonly referred to as the Mormon faith. She was a member of that faith at the time that she made her application at SBC and was at the time of this hearing.

She testified that she had applied for the job of Accounting Clerk at SBC in response to an ad she had seen in the local Steinbach newspaper. At the time, she was working permanent part-time and wanted full time work closer to her home. She was contacted for an interview and met Mr. Ron Janzen, Financial Administrator for SBC, sometime prior to June 10, 1991. This meeting lasted for approximately one hour and a typical job interview seems to have occurred. Ms. Schroen was not asked about her religious belief, nor did she volunteer any information concerning her own beliefs during the interview. At the end of the discussion, she was given an application form to fill out, which included a Statement of Faith document. She was not requested to complete the application form in any time period, but returned it fully completed within about one half hour of the interview. The application form was dated May 28, 1991, and had a handwritten question on page two thereof, specifically; "Do you affirm the attached Statement of Faith?" In her response Ms. Schroen had written, "Yes, I agree with the Statement of Faith" and in her testimony stated that "I had no objection to it". The Statement of Faith, Exhibit 3, tab 1 0, was a single sheet of paper with I I numbered paragraphs and read as follows:

"ARTICLE V
Statement of Faith

1. We believe that the Scriptures of the Old and New Testament are wholly inspired by God and are the infallible and final authority in faith and life.
2. We believe in one god, eternally existing in three persons: Father, son and Holy Spirit.
3. We believe that Jesus Christ was begotten by the Holy Spirit, born of the Virgin Mary, and is true God and true man.
4. We believe that man was created in the image of God: that he sinned, and thereby incurred that death which is separation from God; and that all human beings are sinful by nature and in need of redemption which can be accomplished alone by the grace and power of God.
5. We believe that the Lord Jesus Christ died for our sins, according to the Scriptures, as a representative and substitutionary sacrifice; and that all who believe in Him are justified on the ground of His sacrificially shed Blood.
6. We believe that all who receive by faith the Lord Jesus Christ are born again of the Holy spirit and thereby become children of God with power to overcome sin and to live a life pleasing to God.
7. We believe that a way of life is taught by Christ and the Scriptures which is God's plan for the human individual and for the race, and that those who espouse

discipleship of Christ are bound to live in this way, Thus manifesting in their personal lives and social relationships the love and holiness of God. We believe that this way of life means also non-resistance to evil by carnal means, the fullest exercise of love, and the resolute abandonment of the use of violence, including warfare. We believe further that the Christian life will of necessity express itself in nonconformity to the world in life and conduct.

8. We believe that the Christian Church consists of believers who have repented from their sins, have accepted Christ by faith, are born again, and sincerely endeavor by the grace of God to live the Christ-life.
9. We believe in the resurrection of the crucified body of our Lord Jesus Christ, in His ascension into heaven, and in His present life there for us as our High Priest and Advocate. We believe in His personal, visible, bodily coming again according to the Scriptures.
10. We believe in the bodily resurrection of all people, the everlasting blessedness of the saved, and the everlasting punishment of the lost.
11. We believe that our generation is responsible for the complete evangelization of this generation-, that all believers carry part of this responsibility and should make the reaching of this objective their life's work."

Ms. Schroen submitted her application, including the Statement of Faith document, to a lady at the front desk and left the premises. She was called a few days later by Mr. Janzen and told that she had the job. Initially, she was required to report for two days of training before the job started in earnest. After the second day of training, she was on her way from the office where she worked, and met Mrs. Ides outside the building. Mrs. Ides is the wife of the President of SBC. During a conversation with Mrs. Ides, it became known that Ms. Schroen was of the Mormon faith.

The next day, Mr. Janzen telephoned Ms. Schroen and advised her that they had become aware of her religious affiliation and that she would not be kept on as an employee of SBC. She requested an interview and subsequently met with Mr. Janzen and the President of SBC, Mr. Ides. At that meeting, it was confirmed that Ms. Schroen would not be kept on as an employee of SBC and she left the meeting.

Ms. Schroen subsequently filed her complaint with the Manitoba Human Rights Commission.

Under cross-examination, Ms. Schroen testified that she could not compare the two Churches. Under further questioning, she did admit that there were differences in the areas of passivism, interpretation between the Old and New Testament, a companion book to the Bible, and the Book of Covenants, which is seen as scripture by the Mormon Church, but it is not viewed that way by the Mennonite Church.

Ms. Schroen further testified that she believed in the Book of Mormon scripture, the Doctrine and Covenants, and the Pearl of Great Price. In fact, she agreed with what was written in the Doctrine and Covenants and the Pearl of Great Price. When asked if she agreed with Joseph Smith's statement in his book, Pearl of Great Price, Chapter 1.14-19;

that all other sects are wrong, Ms. Schroen stated that she agreed with that statement. She also indicated that she was aware of the doctrine of the baptism of the dead and was aware of the practice of it. In fact, she had volunteered on a number of occasions during a baptism for the dead and had been in the Temple located in Cardson, Alberta, more than once for such purposes. She acknowledged that the Mennonite teachings disagreed with a number of doctrines of the Mormon faith, including the baptism of the dead, interpretation of the Old and New Testament, and companion books to the Bible.

In other areas, Ms. Schroen was aware of substantial differences between the two religions, including Mennonite teachings that the Mormon faith is considered a cult. The SBC sold books on the subject of Cults to students and she stated that she would not be comfortable in having to provide these books to students.

I gained the impression that Ms. Schroen knew that if SBC were aware she was of the Mormon faith, she would not be offered the position. I find that her original application, resume, interview and her Statement of Faith were all calculated to mislead and conceal the fact that she was of the Mormon faith. When asked, she admitted that it would jeopardize her job application at SBC if her prospective employer knew her faith. I also find that Ms. Schroen was not sincere when she stated that she had no objection to the Statement of Faith, when in reality it went directly against her Mormon faith and beliefs. I find that she was less than candid when answering questions about her religious beliefs and workings of the Mormon faith. I find that she was far more knowledgeable than she let on, based on her activities within the Mormon Church, demeanor and evasive ways when testifying. I do not accept her evidence that she had no objection to the Statement of Faith that SBC required her to acknowledge.

The second and last witness called by the commission was Sharon Wickman. Ms. Wickman was the Compliance Supervisor for the MHRC. She testified that after investigating a complaint, a recommendation is made, which is then forwarded to the Board of Commissioners. They then make the final decision regarding any action to be taken. She stated that this was the normal practice and that it was not uncommon for the Board to reject the recommendations, although it was unusual for the Board to not follow the dismissal of a complaint. In this particular case, the recommendation of the Compliance Officer was to dismiss the complaint pursuant to Section 29(1)(c) of the Code. The Board did not follow that recommendation. In my view, this particular evidence has no bearing on these proceedings and contributed nothing to the hearing.

Mr. Stan Flett was called as a witness. He is the current President of SBC. He has a Bachelor of Education Degree and a Masters of Divinity Degree from the University of British Columbia. He also teaches high school at SBC and has done so since 1991. He spoke of the Evangelical Anabaptist objectives, which were consistent with the objectives of SBC. He indicated that at SBC there is a strong interaction between staff and students and staff and faculty. The historical background of SBC was that people of the Mennonite faith founded it in 1936. The school is, in general, ministry oriented, but recognizes liberal arts courses. The purpose of SBC is to train college students in nurturing faith relations and for ministry work with an Evangelical perspective. SBC also has a direct tie with the

constituency that it serves. He described the Philosophy of Education at SBC as being tied to the scriptures and that whatever is taught, accomplished or stated at SBC is rooted in the Bible - the Old Testament and the New Testament from the Christian perspective. He stated that it would be inconsistent to teach students something other than what they, at SBC, lived out in their daily lives.

Mr. Flett testified that SBC is owned by three Mennonite church groups or constituencies, namely; The Chortitzer Mennonite Conference, The Evangelical Mennonite Conference and The Evangelical Mennonite Mission Conference. These conferences supported SBC financially.

Mr. Flett's evidence was that all those at SBC from teachers, students and staff were expected to interact so that a total sense of community existed to enable students to speak to their teachers, to an accounting clerk or to a janitor. The Statement of Faith was a prerequisite to employment for all staff and faculty. It was the basis of the Evangelical faith and belief that was crucial to the foundation of SBC.

As part of the SBC handbook, it states under "Board - Staff Relations" that "Strong Board-Staff relations are vital to the effective functioning of an Institution." And under "Student - Staff Relations" it states "The Institution exists for the students. The Staff seeks to help students to learn and to develop so as to become more Christ-like. Staff are encouraged to have an open door policy for students, learn to know as many by name as possible and make themselves available to them" and "Staff and their families are welcome to have a meal once a week in the school cafeteria. This helps build closer relationships and provides an opportunity for the students to know the staff and their families better." Although not specifically articulated in any policy, it was expected that everyone at SBC share faith, meals, fellowship and community life together throughout the school year. Several programs did exist and were practiced to ensure that this would occur. The programs included: the meal a week program where staff and their families could dine at the school to encourage interaction between the students and the staff, a yearly camping trip where all staff were encouraged to attend, attending faith chapels and having students invited to their homes during the year to spend a weekend to interact and share faith stories.

Mr. Flett testified that the accounting clerk position included many interactions with students particularly in the bookstore. He described the bookstore as a "hub of activity" for the person responsible for running it and this provided daily interaction with the students.

It was the view of Mr. Flett that it would be very disruptive to SBC if a person of the Mormon faith worked there. He felt that it would create tension at the school, and would be detrimental to the students to have an element that was not part of the community. As well, SBC would lose the support and confidence of the constituency. Mr. Flett also felt that such a person would feel alienated by not being able to partake in the functions being offered at SBC, such as sharing faith stories, attending regular prayer meetings and talking to the students about the Christian values being promoted at the school. As well,

he indicated that he did not believe that such a person would feel comfortable selling books describing Mormons as a cult.

The witness, Sharon Reimer, worked at SBC as the accounting clerk from 1987 until 1991. Esther Schroen replaced her, and after Ms. Schroen was terminated, Bonnie Peters became the accounting clerk. Ms. Reimer was very involved as an Evangelical Mennonite Anabaptist person and traveled on mission work, for a year, after leaving SBC.

Ms. Reimer gave evidence of her job duties as accounting clerk during her time in that position at SBC. She testified that her job entailed looking after accounts payable; maintaining all book balances; completing monthly financial statements; buying text books; ordering books for students from catalogues; attending monthly support staff meetings; registering students at the start of the school year; providing monthly bills to students; handing out texts to students; book exchange for students, changing courses; accepting payments from students for tuition during the year; and paying resident students for student employment at SBC. She also testified that her interaction with the students included giving testimonials at chapel seminars, visiting with the students in the hallways, at the book store and in the cafeteria. Ms. Reimer indicated that there was a social once a year, which related to the faith of the College, and that she had attended it. She also attended student staff retreats and chapel sessions. She also testified that she had students stay at her home on weekends. She stated that the College encouraged all these activities. Her faith permeated all of her activities', including her job performance as accounting clerk. Students often talked to her about matters concerning their faith, morals and beliefs. Ms. Reimer stated that "I had contact with the students a lot". She indicated that she got to know students on a personal basis and often discussed faith in connection to their daily lives. She testified that she had lots of opportunity to influence the students. Even in her office setting, discussions with other staff related to topics of faith and religion and as she said "that's what we did there - talked about our religion".

Mr. Ron Janzen was the administrator at SBC from April 1990 to August 1994. He testified that the "college was steeped in interaction with the students". He spoke of interaction between staff and students and how the staff saw the ' domestic mission of their jobs as being "my work was my faith - my faith was my work"; they went hand in hand at the College. The College was seen as an arm of the Mennonite Church. The staff was expected and encouraged to interact with students through chapel sessions, Bible study groups at staff homes and the meat benefit program.

Mr. Janzen testified that "Staff in the College handbook meant all persons employed at SBC whether called faculty, staff or support staff.

In the job interview with Ms. Schroen it is clear that Mr. Janzen thought she was of the Mennonite faith. His reasons for this belief included the following: her maiden name was hyphenated on her resume as Enns-Schroen and Enns is a very common and popular Mennonite name and it was also considered by them as a very Anabaptist thing for women to hyphenate their name after marriage; she listed church affiliated volunteer

programs which were very common in the Mennonite Church; she was a tour guide at the Mennonite Heritage Museum which has a Mennonite Church connection, she gave as a character reference the name of a lady from the Mennonite Heritage Museum; and she stated during the interview that she grew up in the Winkler area which is a Mennonite pioneer community. Mr. Janzen testified that on technical merit he would not have hired Ms. Schroen as she did not have the kind of background needed for the job. However, it was his position that people could be trained to learn the required functions. The attributes, which convinced him that Ms. Schroen was the person for the job, were her ability to communicate her friendliness and his belief that she possessed the qualities that are beneficial to the overall environment at SBC. All of this however, was based on his mistaken belief that Ms. Schroen was of the Mennonite faith. Mr. Janzen readily admitted that if he had known Ms. Schroen was Mormon, he would not have offered her the position at SBC.

After two days of training, Mr. Janzen learned of Ms. Schroen's religious affiliation and called her on June 19, 1991 to arrange a meeting. It was his evidence that it was the belief and position of the College that those of the Mormon faith hold beliefs that are in direct contradiction to the beliefs enumerated in the Statement of Faith required at SBC. At the meeting with Mr. Janzen, Mr. Ides and Ms. Schroen, there was an attempt to demonstrate the fundamental differences from scripture, between the two religions. Ms. Schroen chose not to enter into that discussion. Ms. Schroen was terminated from her position and Ms. Bonnie Peters was hired as the accounting clerk.

The witness, Bonnie Peters, was in the position of accounting clerk shortly after Ms. Schroen left. She described her job duties as accounting, attending Chapels, attending monthly support staff meetings, Bible study at her residence with students, involvement with students through contact at her office, covering at the front office when the secretary was absent, which increased student contact, paying student workers, speaking to students wishing to order books and attending committee meetings. She stated that her "faith was involved in work all the time and that it was hard to separate when it is and when it isn't part of what we do". She related instances of interaction with not only students but also parents, which involved discussion of their faith. She stated that staff persons are encouraged to interact with students and that it was expected of staff.

The Chancellor, Mr. Ben Ides was called and he testified that he was a graduate of SBC and at one time was the President of SBC. He was well acquainted with the entire operation at SBC. At the meeting he attended with Mr. Janzen and Ms. Schroen, he testified that she was not prepared to enter into a discussion regarding her faith or that of SBC. He could not accept that a person who can hold to Mormon beliefs could accept the Statement of Faith at the same time. He was of the view that they had no alternative but to release her from employment.

He indicated that SBC could not survive without the financial assistance and backing from the constituencies or conferences that supported SBC. He stated that they would not support the College if a Mormon were on staff due to the distinctive nature of the

Evangelical Mennonite Anabaptist beliefs and make-up of SBC. The two religions were not seen as being compatible in any way.

The Respondent called Dr. James A. Beverley as an expert witness. He was qualified to give expert testimony in new religions, contemporary religious movements, Mormonism, comparative religions and religious communities. He briefly described the historical background of the Mormons and the Mennonites. He stated what the Evangelical perspective was and stated that SBC clearly falls under the worldview of evangelicalism. He also testified as to the differences in the view of the Christian scripture in Mormonism, the view of God in Mormonism, the view of the Church in Mormonism, the view of Joseph Smith in Mormonism, the view of Mormon scripture in Mormonism, the view of Salvation in Mormonism, the view of Jesus Christ in Mormonism and the view of key historical issues in Mormonism and all were compared with the Evangelical Christian view under those same headings. He stated that the gulf is deep and wide between the two views and that it is obviously clear that there are sharp divisions in theological beliefs. These statements I accept having heard all of or. Beverley's testimony and having considered his documents filed as exhibit number 23, outlining the differences between the Mormon faith and the evangelical Perspective, all as outlined above.

Dr. Beverley also testified in regard to the Statement of Faith and how, in his view, Esther-Schroen could not have signed it in good conscience. He pointed out that she had received endowment garments at a temple ceremony, that she was married in the Temple in Salt Lake City, Utah, where only faithful Mormons could attend. He testified that one would have to pass the security of the Mormon leaders to obtain a temple pass and only those, on a higher level within the Church, can go to a Mormon temple. It was his opinion that Ms. Schroen took her faith very seriously. The fact that Ms. Schroen was a guest speaker at a Mormon function with a major Mormon leader would be viewed as making her a faithful Mormon and that she would be well informed in their ways and teachings.

Dr. Beverly testified that a Mormon could not sign the SBC Statement of Faith in totality knowing it was from a Mennonite College. A Mormon could not accept that the Bible is the final authority, as stated in number one in the Statement of Faith. A Mormon would deny the Trinity and Ms. Schroen would know this and not agree having been a Mennonite and now a Mormon. Number 3 in the Statement of Faith would also cause some difficulty for a Mormon to sign. Regarding number 4, Mormons do not share the evangelical point that humans have original sin. Number seven does not fit the Mormon credo of being a passivist.

According to Dr. Beverley, Mennonites place their emphasis on community. SBC faculty and staff view themselves as a team together fulfilling the mission of the Bible College. He stated that the gap between faculty and staff at SBC is very narrow. He indicated that he worked in a small college, formerly a Bible college, and he noted that the staff did influence students more than the faculty members. He stated that it would be amazing to have someone of the Mormon faith on the SBC team. He felt it would be a distressing situation and based on his experience, it would create enormous conflict.

Dr. John Stackhouse was called by the Intervenor and was qualified to give expert testimony in the area of comparative religions, religious communities and their relationship to and upon one another. Dr. Stackhouse gave a history of the background of the Mennonite movement and of the Mormon movement pointing out the specific nuances and beliefs of each movement.

In reviewing the Statement of Faith, Dr. Stackhouse was of the opinion that statements numbered 3, 5, 6, 8, 9, 10 and 11 at a superficial reading could be taken in a Mormon way. However, he was also of the opinion that there would be parts of each in which there would be significant divergence considering the deeper definitional faith and theology meaning between the Mormon and Mennonite focus on each particular item.

In regard to numbers 1, 2, 4 and 7, he testified that there are terms that simply cannot be interpreted from a Mormon Point of view without strain or Just plain contradiction. He went on to point out with specificity the direct contradictions between the Mormon beliefs and the beliefs of the Mennonites at SBC as detailed in the Statement of Faith. He also stated that "Mormonism isn't just a very different kind of Christianity, it's not Christianity".

Dr. Stackhouse commented on the Letters Patent incorporating the College and in particular its objects. He was of the view that they mean SBC was to run a school that is thoroughly Christian in everything it does, that they were going to make every effort to follow the Christian faith in everything they do, that the school was to be permeated with a Christian understanding a Christian rationale and a Christian feeling. Also, emphasis was placed on trying to provide the students with an atmosphere in which they can grow in their faith. He also stated that "they take the students with particular seriousness, and the students are seen to be in a vulnerable learning situation, and so they are going to take great care to provide an atmosphere in which these students that come to them on trust will find and be able to count on a Christian atmosphere wherever they go". He went on to say "it would imply that those who generate the atmosphere must themselves be Christians and that would be the people involved in employment at the college".

Dr. Stackhouse was a graduate of a small Bible School. He studied Canadian Bible Colleges in Canada and has written a book on the subject. He spoke to the fact that many are very small communities and everyone knows everyone after a while, He stated "Particularly, the staff are very - - are purposely in front of the students and are expected to lead by example, as well as by whatever they say or don't say, in showing how to work as a Christian person." He also said "A person affects the working environment of the people who are in contact with you, and so, given how interwoven these little institutions are, ecologically no one is isolated from influence." Later on in his testimony he said "The emphasis in the Bible college is to help students enter a kind of total environment in which they see Christianity lived out literally in the nifty-gritty of selling books or cutting the lawn or making beds, as well as in the so-called spiritual practices of teaching and prayer. And if that pattern is not sustained, then the education is compromised."

I accept the foregoing evidence of Dr. Beverley and Dr. Stackhouse.

THE FINDINGS

Section 14(1) of the Code states as follows:

"No 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"

Having heard and seen all the witnesses, having read all the documents filed as exhibits and having listened to the arguments; I find that the reason Ms. Schroen did not keep her employment with SBC was based solely on her religious belief and religious association. Therefore, the answer to the first issue is yes, there was discrimination under the Code. However that does not end the matter. One must look at the second part of section 14(1) of the Code dealing with the discrimination.

The second issue that must be addressed is whether or not the discrimination was based upon bona fide and reasonable requirements or qualifications for the employment or occupation. There are two matters that need to be addressed. The first is whether there was a bona fide requirement. Secondly, the discrimination must be based on reasonable requirements or qualifications for the employment. If the discrimination is based upon bona fide and reasonable requirements or qualifications for the employment, then SBC is not in violation of the Code. This is a much more difficult issue and requires careful consideration.

The preamble to the Code itself sets out the goals that the Code is attempting to achieve. A synopsis of the preamble includes equality of opportunity with all other individuals, the necessity to restrict unreasonable discrimination against individuals, establishment of programs to overcome historic disadvantages and the establishment of educational programs to assist Manitobans to understand all their fundamental rights and freedoms, all of which merits paramount status over all other laws of the province. With the foregoing in mind I will address the issue of whether the discrimination by SBC was bona fide and a reasonable requirement for the employment in question.

In considering whether a requirement is bona fide the Supreme Court of Canada in the case of Ontario Human Rights Commission v. Etobicoke [1982] 1 S.C.R. 202 at page 208 stated:

"To be a bona fide occupational qualifications and requirement a limitation, ..., must be imposed honestly, in good faith, and in the sincerely held belief that such limitation is imposed in the interests of the adequate performance of the work involved with all reasonable dispatch, safety and economy, and not for ulterior or extraneous reasons aimed at objectives which could defeat the Purpose of the Code."

I find that the action of SBC was, in fact, bona fide. I could find nothing in the evidence presented before me that would indicate that their actions or intentions were anything but bona fide in coming to the conclusion that they could not have Ms. Schroen, a person of the Mormon faith, and belonging to the Church of Jesus Christ of the Latter Day Saints, employed at their institution as the accounting clerk. This first part of the test is subjective and counsel for all parties were in agreement that the subjective part of the test was met in this, case and I concur that the subjective test was met.

Having found that the requirement by SBC for the employment at their Institution required someone of the Christian faith closely akin to their own faith was bona fide, I must then consider whether the requirements for the occupation were reasonable. The Honourable Mr. Justice McIntyre of the Supreme Court of Canada in giving reasons for the Court in the Etobicoke case, supra, at page 208 stated:

"Once a complainant has established before a board of inquiry a prima facie case of discrimination, ...as a condition of employment, he is entitled to relief in the absence of justification by the employer. The only justification which can avail the employer in the case at bar, is the proof, the burden which lies upon him, that such compulsory retirement is a bona fide occupational qualification and requirement for the employment concerned. The proof, in my view, must be made according to the ordinary civil standard of proof, that is upon a balance of probabilities."

The court went on to describe the subjective test and the objective test that must be met in coming to a decision regarding the bona fide and reasonable requirements for the occupation being considered. There is both a subjective test to be applied and an objective test to be applied to the case before me. As previously stated the subjective test has been met.

However, the answer to the second test depends upon a consideration of the evidence and of the nature of the employment concerned. The nature of the employment concerned in this case has to be considered not only with the specific job duties, but also consideration must be given to allow a religious group to achieve its religious objectives. Clearly, this case involves the rights of one religious group and the religious freedom of an individual. How the job or employment relates to the overall functioning in the institution where the job is performed must be considered. This does not mean that one religious faith is right or wrong. However, is it's goals and objectives of such a paramount consideration that discrimination is necessary to fulfill these goals and objectives? As well, is the discrimination a bona fide and reasonable requirement for the employment or Occupation? These are the questions that need to be answered.

I find that the job duties of the accounting clerk at the SBC included the following; accounts payable, accounts receivable, payroll, reconciliations, monthly financial statements, receipting, purchasing and sales of text books to students, operating the bookstore, registration of students and issuing receipts for tuition, maintaining office supplies, materials and products, attending policy and planning committee meetings, and attending monthly support staff meetings. Although not specifically listed in any job

description, it was generally understood and a basic premise at SBC that all employees, be they teachers, staff, support staff, or executives would involve themselves and regularly attend Chapel prayer meetings, attend the school retreat held each year, have students at their homes for group Bible study sessions, attend the school cafeteria to have meals with students and be available at anytime to discuss faith matters with students. In short, everyone employed at SBC was expected to share in a faithful way with students espousing the Christian faith, as that was what SBC was all about.

During her job interview, Ms. Schroen showed a high degree of insight and understanding in what the job at SBC involved and in particular the connection between church and community. She gave the distinct impression that she would fit into the environment at SBC. As a result she was hired for her friendliness and the perception that she would contribute to the environment at SBC. She was not hired based on any ability to perform the technical part of the job. Mr. Janzen was of the opinion that "technical jobs can be trainable". Based on his mistaken belief that Ms. Schroen was of the Mennonite faith, she was hired. She was viewed as a person who would fit into the interwoven dynamics of job and faith that permeated the entire SBC. As the witness Bonnie Peters put it, in referring to the closeness of community at SBC, "faith was involved in work all the time - it was hard to separate when it is and when it isn't part of what we do". I find that the mechanical, technical and simplistically described job function duties of the accounting clerk at SBC could not be separated from the religious environment and the atmosphere of the Christian understanding and rationale and feeling that lies at the very heart and root of all the functions, activities and programs at SBC.

It is very clear that the dichotomy between the Evangelical Anabaptist Mennonite faith and the faith of the Mormon or Church of Jesus Christ of the Latter Day Saints is diametrically opposed. This was clearly established in the evidence of Dr. Beverley and Dr. Stackhouse.

Counsel for the Intervenor cited cases (noted below), dealing with bona fide occupational requirements for an employee of a private religious institution. These institutions were founded on and held deep-rooted religious beliefs. The cases held that the institutions could require that the employee be of the same belief and adhere to those beliefs in order to work at the Institution. It should be noted, however, that these cases involved teachers at religious schools. I was not provided with, nor am I aware of, any cases that have dealt with other occupations at religious institutions where such other occupations have been held to fall within the parameters of being a bona fide and reasonable requirement or occupation.

Caldwell v. Stuart (1984), 15 D.L.R. (4th) 1 (S.C.C.)

Garrod v. Rhema Christian School (1991), 92 C.L.L.C. 16,022 (Ont. Bd. Inq.)

Kearley v. Pentecostal Assemblies Board of Education (1993), 19 C.H.R.R. D/473 (Nfld. Bd. Inq.)

In the Caldwell case, supra, at page 3, Mr. Justice McIntyre stated

"A broader issue may be said to arise concerning a conflict between two legally established rights, that of the individual to freedom from discrimination in employment, and that of a religious group to carry on its activities in the operation of its denominational school according to its religious beliefs and practices."

A requirement to work at SBC involved the acknowledgement, by all employees, including prospective employees, of the Statement of Faith. The College also, has as its objects, enumerated in its constating documents, the reasons for and the beliefs under which the Institution is to operate.

The special nature of the College, and both the external and internal forces that the students would be subject to, which would impinge on their consciousness, should not be jeopardized in the close, tight, focussed and interactive community that exists at SBC. Considering the unique role of an accounting clerk at SBC and that the unique culture of SBC including its philosophy, mission, faith, beliefs, ethics and the acceptance and observance of the Statement of Faith are reasonable and necessary to assure achievement of the religious objects of the College, it is my view that the Etobicoke test has been met. As a result, and under the circumstances of this case, the requirement that the accounting clerk be of the Mennonite faith to work at SBC constitutes a bona fide and reasonable requirement or qualification for that employment or occupation at SBC.

I would add that at the commencement of argument, counsel for the Commission indicated that Ms. Schroen was not interested in any monetary award or reinstatement of her employment. She was merely looking for an order that there was a violation of the Code.

I would also add that, in my opinion, the two issues raised by the Intervenor dealing with the application of section 14(1) of the Code and the application of the Charter of Rights and Freedoms need not be dealt with in this decision.

A list of the cases that Counsel provided to me is attached to this decision.

ORDER

As a result of my findings I order that the complaint of Esther Schroen against Steinbach Bible College be dismissed.

Donald R. Knight, Q.C. Board of Adjudication

LIST OF AUTHORITIES

1. Christian Horizons v. Ontario Human Rights Commission (1993) 14 O.R. (3rd) 378 (Ont. Div. Ct.)
2. Ontario Human Rights Commission v. Etobicoke (1982), 132 D.L.R. (3d) 14 (S.C.C.)
3. Caldwell v. Stuart (1984), 15 D.L.R. (4th) 1 (S.C.C.)
4. Garrod v. Rhema Christian School (1991), 92 C.L.L.C. 16,022 (Ont. Bd. Inq.)
5. Kearley Pentecostal Assemblies Board of Education (1993), 19 C.H.R.R. D/473 (Nfld. Bd. Inq.)
6. Gore v. Ottawa Separate School Board, unreported decision of an Ontario Board of Inquiry chaired by W.S. Tarnopolsky, dated December 7, 1971
7. Ville de Brossard v. Commission des droits de la personne du Quebec (1988), 53 D.L.R. (4th) 609 (S.C.C.)
8. Re Newfoundland Teachers' Association and The Queen in right of Newfoundland (1988), 53 D.L.R. (4th) 161 (Nfld. C.A.)
9. Adler v. Ontario Hockey Association (1996), 140 D.L.R. (4th) 385 (S.C.C.)
10. Blaney v. Ontario Hockey Association (1986), 21 C.R.R. 44 (Ont. C.A.)
11. Slaight Communications v. Davidson (1989), 59 D.L.R. (4th) 416 (S.C.C.)
12. The Queen v. Big "M" Drug Mart (1985), 18 D.L.R. (4th) 321 (S.C.C.)
13. Lavigne v. O.P.S.E.U. (1991), 81 D.L.R. (4th) 545 (S.C.C.)
14. Regina v. Videoflicks (1984), 48 O.R. (2nd) 395 (Ont. C.A.)
15. Super Sam Red Deer Ltd. v. Lethbridge, 112 A.R. 45 (Alta. O.B.)
16. B.(R.) v. Children's Aid Society of Metropolitan Toronto (1995), 122 D.L.R. (4th) 1 (S.C.C.)
17. Canada (Attorney General) v. Mossop (1993), 100 D.L.R. (4th) 658 (S.C.C.)
18. Parks v. Christian Horizons (1992), 16 C.H.R.R. D/40 (Ont. Bd. Inq.)
19. Parks v. Christian Horizons (Board of Inquiry Decision on Remedies, 17 June, 1992 - typescript)

20. Parks v. Christian Horizons (Ontario General Division endorsement dismissing appeal, typescript; leave to appeal to Ontario Court of Appeal denied)
21. Ontario (Human Rights Commission) and O'Malley v. Simpson Sears (1985), 23 D.L.R. (4th) 321 (S.C.C.)
22. Nova Scotia (Workers' Compensation Board) v. O'Quinn (No. 2) (1997). 27 C.H.R.R. D/437 (N.S.C.A.)
23. R. V. Jones, [1986] 12 S.C.R. 284
24. Seaboyer v. Her Majesty The Queen et al., [1991] 2 S.C.R. 577
25. Action Travail Des Femmes v. Canadian National Railway Co., et al. (1887), 40 D.L.R. (4th) 193 (S.C.C.)
26. Lakeside Colony of Hutterian Brethren v. Hoffer, [1992] 3 S.C.R. 165
27. Newfoundland Association of Public Employees v. Newfoundland (Green Bay Health Care Centre), [1966] 2 S.C.R. 3
28. Daly v. Ontario (Attorney General) [1997] O.J. No. 5040 p. 1