

Court File No. A-216-07

**FEDERAL COURT OF APPEAL**

BETWEEN:

SUSAN COMSTOCK

Appellant

- and -

TREASURY BOARD OF CANADA, and PUBLIC SERVICE ALLIANCE OF CANADA

Respondents

**MEMORANDUM OF FACT AND LAW of the APPELLANT SUSAN COMSTOCK**

August 10, 2007

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**PART I: STATEMENT OF FACTS: Overview**

1. Ms. Susan Comstock is a Roman Catholic civil servant who sought a religious accommodation by having her union dues diverted to charity pursuant to an available remedy in her collective agreement. This remedy is afforded to other federal civil servants of different faiths who may have conscientious religious objections to financially supporting the union. After communicating her beliefs by affidavit dated September 29, 2004, as required, her request for religious accommodation was refused on March 2, 2005. Ms. Comstock filed two complaints against the Respondents with the Canadian Human Rights Commission (hereinafter, "the Commission"), in April, 2005, seeking a review of her application. The Commission notified Ms. Comstock in a letter dated February 3, 2006 that it refused to deal with her complaints pursuant to its application of s. 41(1)(c) of the *Canadian Human Rights Act* (hereinafter, *CHRA*), which says:

**41.** (1) Subject to section 40, the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that...(c) the complaint is beyond the jurisdiction of the Commission.

2. Ms. Comstock brought an application for judicial review of those decisions on March 3, 2006, pursuant to s. 18.1 of the *Federal Court Act*. Her applications were dismissed by Mr. Justice Frederick E. Gibson on March 30, 2007. She now appeals that decision.
3. It is acknowledged that neither Respondent produced evidence to rebut Ms. Comstock's sincerity of belief. Case law has held that a court (or commission) should not engage in an analysis of the merits of a particular religious tenet. Nevertheless, the Roman Catholic Church has a well documented position on same-sex "marriage" and the sinfulness of homosexual behaviour. Ms. Comstock believes her financial support of the union serves as financial support for its advocacy on this issue, and breaches her CHRA and constitutional rights. Such financial support constitutes illicit support of sinful behaviour, which would be sinning against God and violating her conscience.

4. In bringing her application for diversion, Ms. Comstock relied upon s.11.04 of the collective agreement:

An employee who satisfies the Employer to the extent that he or she declares in an affidavit that he or she is a member of a religious organization whose doctrine prevents him or her as a matter of conscience from making financial contributions to an employee organization and that he or she will make contributions to a charitable organization registered pursuant to the Income Tax Act, equal to dues, shall not be subject to this article, provided that the affidavit submitted by the employee is countersigned by an official representative of the religious organization involved.

She also relies upon:

- a. ss. 3 and 7 of the *CHRC*;
- b. s. 5(2) of the Respondent Union's Constitution;
- c. s. 3.1 of the *Civil Marriage Act*;
- d. ss. 2(a) of the *Canadian Charter of Rights and Freedoms* ("the Charter");
- e. ss. 2(d) of the Charter,
- f. section 7 of the Charter, and
- g. ss. 15(a) of the Charter.

#### **Part I - Summary of Facts**

5. Susan Comstock is a federal civil servant at the Department of Indian Affairs and Northern Development, and has been a federal civil servant since 1973.

***Paragraph 1, Affidavit of Susan Comstock, sworn March 30, 2006, Comstock Appeal Book, Tab 9. (hereinafter "Comstock Affidavit").***

6. Ms. Comstock's religious faith is of utmost importance to her as a human being, deeply affecting and informing her personal characteristics, needs, capacities, and life circumstances. Her self-determination, fulfillment, and autonomy as a human being are integrally linked to her religion.

***Paragraph 2, Comstock Affidavit.***

7. So intrinsic to her being as a person is faithful belief and practice of her Christian religion that having been a lifelong Anglican, she left the Anglican Church of Canada because of its ambiguous position with respect to the blessing of homosexual relationships and her

sincerely held beliefs about sexuality, marriage, and family. On August 7, 2004, Ms. Comstock was received and confirmed as a Roman Catholic, that Church having a well documented and well known affirmation of traditional marriage and the obligations of its members.

***Paragraph 3, 4, 5, 6 Comstock Affidavit.***

8. The provisions of the collective agreement between the Respondent Government, as employer, and the Respondent Union, affords accommodation to some conscientious religious objector employees, such as members of the Seventh Day Adventist Church, and the Baptist Church.

***Kurvits v. Canada [1991] C.H.R.D. No. 7; 1991 CanLII 9 (C.H.R.T.)***

9. Ms. Comstock further discovered that the Respondent Union instituted, Policy 31, which discriminates against Roman Catholics, Orthodox Christians, Orthodox Jews, Muslims, Sikhs, Hindus and others. The expressed goal of Policy 31 is to have “zero tolerance of homophobia and heterosexism” (as defined) within the union. This Policy discriminates against Ms. Comstock deeply on the basis of her sincerely held religious beliefs with respect to sexuality, marriage, and family. Policy 31 wrongly attributes hatred and fear of, and mistreatment towards, homosexuals by dissenting individuals of religious faith as “homophobia”, and inappropriately evaluates religious beliefs about heterosexuality in a negative way:

The Alliance believes that heterosexism (the presumption that everyone is heterosexual and that heterosexuality is superior to other forms of loving) has constructed a social edifice which denies the existence of lesbians, gay men and bisexuals, of their relationships and their families. The Alliance believes that fear and hatred of lesbians, gay men, and bisexuals is passively and actively encouraged when institutions do not speak out against overt and covert discrimination against lesbians, gay men and bisexuals. To remain silent in the face of discrimination is to suggest tacit approval of harassment, intimidation and violence against gay men, lesbians and bisexuals.

***Exhibit “E”, Comstock Affidavit.***

10. Such marginalization makes Ms. Comstock (and others of certain faith groups) a moral and social outcast within her union, and creates the impression or belief that her contribution or

presence in the union is unwelcome, inferior, and of little or no positive value as an alleged bigot. The provision breaches s. 5(2)(b) of the Respondent union's own Constitution:

*Every member in good standing under Section 4, Sub-section (2) is entitled:...*  
*(b) to be free from any act or omission on the part of the Union, or other members, that would discriminate against the member on the basis of age, sex, colour, national or ethnic origin, race, **religion**, marital status, criminal record, physical or mental disability, sexual orientation, language, political belief, or employer [emphasis added].*

The policy does not accommodate adherents to major faith groups that oppose positions such as elements of Policy 31.

***Paragraph 10, Comstock Affidavit.***

11. Moreover, the advocacy of the Respondent Union on the issue of same-sex "marriage" is well-documented and not disputed, and offends Ms. Comstock's conscience.

***Exhibits "E, F, I, L, M, R", Comstock Affidavit.***

12. After her conversion to Roman Catholicism, and as a result of her deeply troubled conscience with respect to financially supporting the union's advocacy of same-sex "marriage" and related matters, Ms. Comstock submitted her application pursuant to section 11.04 of the collective agreement by the requisite affidavit, sworn September 29, 2004. The Honourable Justice has misunderstood or misconstrued the evidence when he ruled in paragraphs 55 to 62 of his Reasons that Charter issues were not raised at first instance by the Appellant. Ms. Comstock's original complaint contained references to the Charter, and was before the Commission.

***Paragraph 22-24, Comstock Affidavit.***

***Pages 79 & 80, Comstock's Appeal Record; pages 26 & 27 of the Tribunal Record***

13. After months of failed attempts to follow the progress of her application, and after receiving various unsatisfactory reasons for the secrecy enveloping the process, while paying her union dues under protest, Ms. Comstock's application was denied by Treasury Board on March 2, 2005.

***Paragraph 25, Comstock Affidavit.***

14. The Respondent Treasury Board's stated reason for denying the request was on the basis that "the Catholic Church has no doctrine that states that membership in the religion is incompatible with membership in an employee organization". The Treasury Board delved into irrelevant and inappropriate assumptions or inquiries about Roman Catholic "membership", doctrine and theology – ones that the Supreme Court of Canada has emphatically forbidden, including an independent inquiry to a Montreal area priest. The Honourable Justice has misunderstood or misconstrued the evidence on this point in paragraph 10 of his Reasons, by suggesting that Treasury Board relied upon a letter from Fr. Tom Lynch, and referring to language used in the Commission's investigation report.

15. Ms. Comstock was, thus, deprived a benefit intended for members of the Respondent union of religious faith. Her constitutional rights to freedom of conscience and religion, freedom of association and other liberties were violated. There was no opportunity to present counter-arguments.

***Paragraph 25, Comstock Affidavit.***

**Comstock's Application to the CHRC**

16. Ms. Comstock submitted two complaints with the Commission, seeking to have her application reviewed. The Commission appointed the same Investigator to review the separately filed complaints against the Respondents. The Commission unilaterally cancelled a mediation session between Ms. Comstock and the Respondent union a week before its scheduled date, without an opportunity to make submissions.

***Paragraph 30, 34, 38 Comstock Affidavit.***

17. On October 7, 2004, the same day that the Commission cancelled the proposed mediation, its Investigator issued a recommendation that the Commission not deal with Ms. Comstock's

complaint against the Respondent Treasury Board, claiming “no link to a prohibited ground of discrimination [having been] established”. The Commission failed to apply the appropriate analysis to Ms. Comstock’s complaint, and instead repeated the legal error of the Respondent Treasury Board, asking questions it was neither qualified nor entitled to ask. The Commissioner’s investigation was procedurally irregular, lacking in transparency, and failed to take submissions of Ms. Comstock into account.

***Paragraph 34, 35, 36, 38, Comstock Affidavit.***

18. On November 22, 2005, the Commission’s Investigator repeated the same recommendation with respect to Ms. Comstock’s complaint against the Respondent union.

***Paragraph 37, Comstock Affidavit.***

19. On February 3, 2006, the Commission advised Ms. Comstock in writing that it had decided not to deal with her complaints on the grounds that they were “beyond the jurisdiction of the Commission as no link to a prohibited ground of discrimination [had been] established”, despite the fact that s. 3(1) of the Act lists religion as a prohibited ground of discrimination.

***Paragraph 39, Comstock Affidavit.***

**Application for Judicial Review and The Order of Mr. Justice Frederick E. Gibson**

20. On March 3, 2006, Ms. Comstock brought her application for judicial review of the Commission's decision to refuse to deal with her complaints on the basis of her conscientious religious objections to the Federal Court (Trial Division). Mr. Justice Gibson delivered his Order on March 30, 2007. Ms. Comstock appeals from that Order to this Honourable Court.
21. The primary determinations by the Honourable Justice to uphold the Commission’s decision were that:
- a. there was no procedural unfairness (paragraph 41);

- b. the standard of review of the Commission's decision was reasonableness (paragraph 34);
- c. the Appellant failed to raise Charter issues at first instance (paragraphs 58, 61); and
- d. the Appellant's complaints were dismissed on reasonable grounds (paragraphs 62, 63).

## **PART II: POINTS IN ISSUE**

22. Ms. Comstock asks the following questions of this Honourable Court:

- a. Ms. Comstock submitted important materials to the Human Rights Commission's Investigator that the Investigator failed to include in her report, and which were not included in the Tribunal Record, and not considered on the application for judicial review. Ms. Comstock is entitled to have important supporting documents, submitted as part of her complaint, comprise a part of the working record for the Court on an application for judicial review. The Commission's failure to refer to these submissions constituted procedural unfairness.
- b. The Commission's process in dismissing these complaints was procedurally unfair in neglecting to take into account:
  - i. Ms. Comstock's original submissions, which included reference to Charter arguments;
  - ii. failure to take into account the provisions of s. 3.1 of the *Civil Marriage Act*,
  - iii. failure to disclose the direct advocacy of the Commission on the same sex marriage issue,
  - iv. the independent pursuit and unknown inquiries of a Montreal diocesan priest, and in its assessment of Ms. Comstock's objections to PSAC Policy 31, and
  - v. the application of the *CHRA* to the application under section 11.04 of the collective agreement.
- c. The Commission dismissed the complaints as being "beyond the jurisdiction of the Commission as no link to a prohibited ground of discrimination was established". The



Honourable Justice treated that decision as being “reasonable”. The issue of jurisdiction, and/or mixed fact and law involving the issue of jurisdiction, are matters of law, or at least legally intensive, such that the standard of review for judicial review should be correctness. In the alternative, the Commission’s decision to dismiss the complaints on the grounds of jurisdiction, and the Honourable Justice’s dismissal of the Application, were untenable when it was accepted that a link to Ms. Comstock’s conscientious and religious rights had been asserted, and recognized as such by the trial judge (see paragraph 44 of the Reasons).

- d. The Commission failed or neglected to apply the recently passed provision of the *Civil Marriage Act*, that specifically safeguards the rights, benefits, and privileges of same-sex marriage “dissenters”, such as Ms. Comstock. No reference to this provision of federal law was referred to by the Commission’s Investigator or the Honourable Justice in his decision on judicial review. Section 3.1 of the *Civil Marriage Act* should be given effect to afford Ms. Comstock the relief she seeks, or an interpretation of provisions of the *CHRA* in her favour to allow the matter to proceed.
- e. The Honourable Justice erred in dismissing Ms. Comstock’s Charter claims, especially on the basis that they had allegedly not being raised at the first instance.
- f. The wording of the provision of the collective agreement is questionable in these circumstances as it provokes an inquiry into tenets of a religious organization, or the substance of an individual’s conscience, both of which are typically not the subject of judicial or quasi-judicial oversight. The provision leads to a situation where some religious groups or religious objectors are favoured over others.
- g. The Commission and the court below erred in failing to recognize how the provisions of PSAC’s Policy 31 violated the Appellant’s human and constitutional rights.
- h. The Honourable Justice misconstrued evidence on the judicial review application.

### **PART III: STATEMENT OF SUBMISSIONS**

#### **a. Failure to Address Particular Evidence by the Commission’s Investigator**

23. Ms. Comstock submitted important materials to the Commission that its Investigator failed to include in her reports, and in some cases were not part of the Commission's Record. These materials included:

- a. Ms. Comstock's written statement in support of her original diversion application - Tab T of Comstock affidavit, pp. 189 and 190, in which reliance was made to the union's own constitution and the provisions of the Charter (it appears that the Honourable Justice misconstrued that these submissions had in fact been made);
- b. two documents submitted with her original diversion application from Vatican sources on legal recognition of homosexual unions (2003) and a letter to bishops (2004) – providing support for her position – Comstock Affidavit, Tabs B and C;
- c. the provisions of the federal *Civil Marriage Act*, and a statement of the Canadian Conference of Catholic Bishops following its passage in July, 2005 - Comstock Affidavit, Tab AA, pages 219-231;
- d. the Comstock letter dated September 1, 2005, a part of which was quoted by the Investigator –Comstock Affidavit, Tab CC; and
- e. notes of the Investigator's interview with a Montreal diocesan priest.

24. At the application for judicial review, the evidence relied upon by the Application Judge was limited to the Commission Record. Regrettably, the Honourable Justice characterized Ms. Comstock's request to have recourse to additional submitted materials as an attempt to expand the Record, when in fact the Record itself contained significant omissions.

25. The law presumes that the Investigator's report correctly summarizes all the evidence before him or her. As the Federal Court stated in *Clark*, "if the Commission is entitled to rely upon the Investigator's Report in making a decision not to refer, resulting in a final disposition of a complaint, then any flaws in that report, unless identified and rejected by the Commission, must also be flaws in the Commission's own decision". "In seeking judicial review of that

decision, an Appellant must be able to attack the Investigation Report and demonstrate its flaws”.

***Clark v. Canada (Attorney General)*, 2007 FC 9 (CanLII)**

26. For the Commission to make an assessment pursuant to the similarly worded paragraph 44(3)(a) of the *CHRA*, the investigation prior to this decision must be thorough. Thoroughness requires a mindfulness “of the interests being balanced: the complainant’s and the respondent’s interests in procedural fairness and the CHRC’s interests in maintaining a workable and administratively effective system”. Ignoring crucial information and arguments in an investigation or failing to advert to the issue of bias by the Commission itself breaches the duty of procedural fairness.

***Slattery v. Canada (Human Rights Commission)*, 1994 CanLII 3463 (F.C.), [1994] 2 F.C. 574, [1994] F.C.J. No. 181 (QL)**

***Lusina v. Bell Canada*, 2005 FC 134 (CanLII)**

***Canada (Public Service Alliance) v. Canada (Treasury Board)*, 2005 FC 1297 (CanLII)**

**b. The Commission’s Flawed Investigation**

27. The Commission’s Investigator was not thorough, having ignored the evidence of Ms. Comstock’s sincere beliefs with respect to same-sex marriage and her objection to the continued financial support of the union, including evidence from Catholic clergy in support of Ms. Comstock’s position – letter from Fr. Tom Lynch (improperly referred by the Honourable Justice as being in support of the Treasury Board position). To the extent that the Commission’s decision relied upon the Investigator, the Commission’s decision cannot be fair when the Investigator’s Report was defective. This in itself, served to dispose of the issue in a recent judicial review application.

***Canada (Public Service Alliance) v. Canada (Treasury Board)*, 2005 FC 1297 (CanLII)**

28. The Commission’s Investigator further erred by consulting a Catholic clergyman in Montreal unknown to all parties. The context and nature of the inquiries were not known. The

Investigator nevertheless relied upon this interview to suggest that the Roman Catholic Church has no doctrine or historical objection to financially supporting unions, without any reference to their current stances on homosexuality, marriage, and the family. Such an inquiry should only be made before a panel of the Commission, failing which such inquiries can and will lead to abuse.

29. If the provisions of section 11.04 of the collective agreement invite such inquiries or investigations, the provision itself may be a breach of Ms. Comstock's Charter rights (discussed below). Such an inquiry is barred and irrelevant if the complainant establishes her sincerity of belief, according to the Supreme Court of Canada, in part because interfaith differences are common. It is simply not the function of the state or the courts to determine if one individual more correctly understands and practises a faith they have. The state knows no heresy, nor should it.

***Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, 2004 SCC 47 (CanLII)**

***Multani v. Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6 (CanLII)**

***Katter v. Ohio Employment Relations Board et al.* (2007), case no. 2:07-CV-43 U.S. Dist. Ct., S.O. Dist. Ohio, East Div.**

***Beers v. International Association of Machinists, Lodge 610* (2003), case no. 6:01-cv-1270-Orl-18KRS, Middle Dist. of FL, Orlando Div.**

30. The Commission's investigation made no reference to the provisions of the preamble and section 3.1 of the *Civil Marriage Act*, providing protection from obligation or sanction under federal law in maintaining a traditional understanding of marriage. In fact, the PSAC policy purports to impose ideological conformity on its members, through its Policy 31 and its advocacy, despite the conscientious objections of its members.

31. The Commission's public statements in support of same sex marriage before the Standing Committee on Justice and Human Rights in June, 2005, made no allowance for a dissenting point of view, which in essence was the subject matter of Ms. Comstock's complaint. The

Commission was being asked to examine the extent of such dissent from support of same sex “marriage”, and its own advocacy on this issue.

32. The disagreement as to the discriminatory nature of a situation is exactly why the Commission should look into a matter thoroughly, and require a hearing. Ms Comstock asserted that the forced financial contribution to the union in the face of its objectionable activities violated her conscience. The Investigator’s report took upon itself to determine if Ms. Comstock’s conscience was compromised by having to continue to pay dues, which it was in no position to do.

***Canada (Public Service Alliance) v. Canada (Treasury Board), 2005 FC 1297 (CanLII)***

33. Furthermore, the Commission’s decision at this preliminary stage was determinative of the rights of the complainant, on the basis of a report that did not properly analyze the allegations of discrimination. In doing so, the Commission failed to give effect to the principle of equal opportunity enshrined in section 2 of the *CHRA*.

***Canada (Public Service Alliance) v. Canada (Treasury Board), 2005 FC 1297 (CanLII)***

**c. As jurisdiction is a matter of law, or mixed fact and law, is the standard of review in matters of jurisdiction that of correctness?**

34. Typically, a determination of a matter as being beyond the jurisdiction of the Commission pursuant to paragraph 41(1)(c) of the *CHRA* is made if the subject-matter is outside the scope of federal law.

***Cooper v. Canada (Human Rights Commission), [1996] 3 F.C.A. 854***

35. Moreover, “[c]urial deference does not apply to a tribunal’s interpretation of human rights legislation”.

***McCormick v. Canada (Minister of Health), 2005 FC 754 (CanLII)***

36. In *Corbiere*, the two errors found by the Court were repeated in this case. The first error was with respect to the failure to make the threshold finding: in *Corbiere*, it was of disability, in

Ms. Comstock's case, it is in respect of religion, or more accurately her religion. The Commission in *Sketchley* was faulted for having failed to make a finding of the existence of a disability. Likewise, the Investigator in Ms. Comstock's case failed to find the existence of conscientiously held religious belief in Ms. Comstock's objection, having made her own theological assessments about the exercise of Ms. Comstock's religious beliefs.

***Corbiere v. Wikwemikong Tribal Police Services Board, 2006 FC 312 (CanLII)***

***Sketchley v. Canada, 2005 F.C.A. 404***

37. Fourthly, the second error mentioned in *Corbiere* was the failure to properly apply the *Meiorin* test for the elements of a bona fide occupational requirement. The limited interpretation of section 11.04 of the collective agreement favours only those religious objectors who can establish "a doctrine that states that membership in the religion is incompatible with membership in an employee organization". This limited remedy must be seen in the context of the obligation to pay union dues to a union that has instituted a "zero tolerance" policy about a moral issue. On the balance of probabilities, according to *Meiorin*, the Court should inquire into whether:

- a. the employer adopted the standard for a purpose rationally connected to the performance of the job;
- b. the employer adopted the particular standard in an honest and good faith belief that it was necessary to the fulfilment of that legitimate work-related purpose; and
- c. that the standard is reasonably necessary to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship upon the employer.

***Corbiere v. Wikwemikong Tribal Police Services Board, 2006 FC 312 (CanLII)***

***British Columbia (Public Service Employee Relations Commission) v. BCGSEU, 1999 CanLII 652 (S.C.C.)***

**Tab V, Appeal Book of the Appellant Susan Comstock.**

38. Here, a “doctrinal requirement” of a particular religion was not required and is not rationally connected to a purpose rationally connected to the performance of the job. The state has no interest in one’s religious beliefs, and the union’s positions may require accommodation from individual members who dissent from its same sex advocacy, even in the absence of a doctrinal statement from their faith group.

***British Columbia (Public Service Employee Relations Commission) v. BCGSEU, 1999 CanLII 652 (S.C.C.)***

39. Therefore, the standard of review on matters of jurisdiction, or on matters where the mixed facts and law are legally intensive, should be correctness.

40. In the alternative, if the Court applies a standard of review of *reasonableness simpliciter*, the dismissal of Ms. Comstock’s complaints cannot be sustained. Complaints based on conscientious religious beliefs falls within the Commission’s mandate and jurisdiction as religion is listed as a prohibited ground of discrimination in s. 3(1).

***s. 3, Canadian Human Rights Act, ( R.S., 1985, c. H-6 ).***

**d. Failure to Properly Consider and Apply the *Civil Marriage Act***

41. The Investigator, the Commission, and the Justice below made no reference to Ms. Comstock’s rights pursuant to the preamble and section 3.1 of the *Civil Marriage Act*. The passage of this provision is instructive as it applies to federal law to safeguard the rights, benefits, and privileges of same-sex marriage “dissenters”, such as Ms. Comstock, or for that matter, millions of other Canadians. The provision states:

Freedom of conscience  
and religion and expression  
of beliefs

**3.1** For greater certainty, no person or organization shall be deprived of any benefit, or be subject to any obligation or sanction, under any law of the Parliament of Canada solely by reason of their exercise, in respect of marriage between persons of the same sex, of the freedom of conscience and religion guaranteed under the *Canadian Charter of Rights and Freedoms* or the expression of their beliefs in respect of marriage as the union of a man and woman to the exclusion of all others based on that guaranteed freedom [Emphasis added].

42. Parliament saw it entirely necessary and appropriate to insert language into the Civil Marriage Act that ensures the accommodation and protection from discrimination of Canadians, or organizations, that believe marriage is between a man and a woman. In such circumstances, any reference to its provisions by any decision maker below, as a matter of law, supports Ms. Comstock's application for judicial review of the Commission's decision, as a matter of law.

43. The Respondent Treasury Board's employment obligations must have reference to the conscientious religious beliefs, and their rights in federal law. The *Civil Marriage Act* applies to Ms. Comstock because the Government, her employer, is depriving her of a benefit (religious accommodation found in the Treasury Board's agreement with her union), or is imposing a sanction in subjecting her to an obligation to pay union dues despite the fact that her sincerely held conscientious and religious beliefs about marriage are in direct conflict with the union's stated policy and its advocacy on this issue. As such, the application Judge erred in making no reference to this protection in federal law, and its application to the CHRA.

**e. Charter Claims**

**(a) Violations of Ms. Comstock's Charter Rights**

**Violation of Subsection 2(a) – Guaranteed Freedom of Conscience and Religion**

44. Religion is defined broadly as follows:

...religion typically involves a particular comprehensive system of faith and worship. Religion also tends to involve the belief in a divine, superhuman or controlling power. In essence, religion is about freely and deeply held personal convictions or beliefs connected to an individual's spiritual faith and integrally linked to one's self-definition and spiritual fulfillment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith.

***Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, 2004 SCC 47 (CanLII)**

45. Freedom of religion has been repeatedly and jealously guarded as a fundamental right and freedom by Canadian courts. Respect for individuals' freedom of religion is entrenched in our legal tradition, without reliance on section 15 of the *Charter*.

***Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, 1985 CanLII 69 (S.C.C.)**



***R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713, 1986 CanLII 12 (S.C.C.)**

***Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, 1996 CanLII 237 (S.C.C.)**

***Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772, 2001 SCC 31 (CanLII)**

***Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, 2004 SCC 47 (CanLII)**

***Reference re Same-Sex Marriage*, [2004] 3 S.C.R. 698, 2004 SCC 79 (CanLII)**

***Multani v. Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6 (CanLII)**

46. Freedom of religion is intrinsically tied to notions of personal choice and individual autonomy and freedom – concepts of “liberty” involved in s. 7 of the *Charter* – and a truly free society accommodates a wide variety of beliefs, customs, tastes, and codes of conduct. Its very purpose is to “ensure that society does not interfere with profoundly personal beliefs that govern one's perception of oneself, humankind, nature, and, in some cases, a higher or different order of being. These beliefs, in turn, govern one's conduct and practices.

***Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, 1985 CanLII 69 (S.C.C.)**

***R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713, 1986 CanLII 12 (S.C.C.)**

***Siemens v. Manitoba (Attorney General)*, 2003 SCC 3 (CanLii), [2003] 1 S.C.R. 6, 2003 SCC 3**

47. At its core, 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 beliefs by worship and practice or by teaching and dissemination. But the concept means more than that....Freedom means that...no one is to be forced to act in a way contrary to his beliefs or his conscience....With the Charter, it has become the right of every Canadian to work out for himself or herself what his or her religious obligations, if any, should be...[Emphasis added.]

***Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, 1985 CanLII 69 (S.C.C.)**

48. Freedom of religion consists of the freedom to undertake practices and harbour beliefs having a nexus to religion. An individual claiming a violation of religious freedom must demonstrate their sincere belief or sincere undertaking in order to be faithful, regardless of

whether the practice or belief in question is required by religious dogma or is in conformity with religious officials, as freedom of religion “extends beyond obligatory doctrine”.

***Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, 2004 SCC 47 (CanLII)**

49. The practices or beliefs of others of the same religion are irrelevant to the validity of an individual’s claim of a violation of religious freedom.

***Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, 2004 SCC 47 (CanLII)**

50. An infringement on religious freedom cannot be made if it is not necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. Subject to those limits, no one is to be forced to act in a way contrary to his beliefs or his conscience.

***Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, 1985 CanLII 69 (S.C.C.)**

51. To demonstrate an infringement of one’s freedom of religion, a person need not establish that their belief or practice is not what the state claims it to be, or even that it is valid; a person need only show that his or her personal and subjective belief in the religious significance of the belief is sincere.

***R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713, 1986 CanLII 12 (S.C.C.)**

***Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, 2004 SCC 47 (CanLII)**

***Multani v. Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6 (CanLII)**

52. Ms. Comstock has clearly met this test. She has a practice or belief about the substantive issues of marriage, sexuality, and family, and financially supporting causes or groups that fight the validity, value, and very existence of those beliefs. Ms. Comstock has shown the sincerity of her religious beliefs about marriage, sexuality, and family, about which she swore her Affidavit. She left the Church that she was raised in (the Anglican Church) late in her adulthood because of its compromising positions on these issues.

53. Inquiries into a person's sincerity of belief must be as limited as possible. The role of the court is simply "to ensure that a presently asserted religious belief is in good faith, neither fictitious nor capricious, and that it is not an artifice. Otherwise, nothing short of religious inquisition would be required to decipher the innermost beliefs of human beings."

***Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, 2004 SCC 47 (CanLII)**

54. In a case s. 2(a) of the Charter, the "emphasis...is on personal choice of religious beliefs". As such, it is inappropriate for courts to inquire into the validity of sincerely held religious beliefs and their recognition among other members of the same religion, and "it is not the role of [the] Court to decide what any particular religion believes". The State is not in the position to be the arbiter of religious doctrine, nor should it become such an arbiter. Therefore, courts should not try to determine, either explicitly or implicitly, the subjective content of religious requirement, obligation, precept, commandment, custom, or ritual, and thus avoid becoming "unjustifiably entangle[d]...in the affairs of religion".

***Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, 2004 SCC 47 (CanLII)**

55. It is also inappropriate for courts to "rigorously...study and focus on the past practices of claimants in order to determine whether their current beliefs are sincerely held". The focus should be on the person's belief "at the time of the alleged interference" with their religious beliefs. "[A]n intrusive government inquiry into the nature of a claimant's beliefs would in itself threaten the values of religious liberty."

***Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, 2004 SCC 47 (CanLII)**

56. Constitutional scrutiny of state treatment of sincerely held asserted religious beliefs is triggered "if the effect of the impugned act or provision interfered with an individual's religious activities or convictions."

***Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, 1996 CanLII 237 (S.C.C.)**

57. “Indirect coercion by the state is comprehended within the evils from which s. 2(a) may afford protection” as long as they are not capricious, trivial, or insignificant.

***R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713, 1986 CanLII 12 (S.C.C.)**

***Multani v. Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6 (CanLII)**

58. Government action can be found unconstitutional even if its purpose or purposes is/are constitutional if its effects interfere with a constitutional right or freedom.

***Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, 1985 CanLII 69 (S.C.C.)**

### **Violation of Subsection 2(d) – Guaranteed Freedom of Association**

59. Freedom has been described by the Supreme Court of Canada as follows:

...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 cannot be said to be truly free.

One of the fundamental purposes of the *Charter* is to “protect, within reason, from compulsion or restraint”.

***Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, 1985 CanLII 69 (S.C.C.)**

60. Ms. Comstock is coerced to financially support same-sex “marriage” advocacy by the failure of the Respondents to recognize her claim to diversion pursuant to the terms of the collective agreement. The Supreme Court of Canada has said that coercion includes:

not only such blatant forms of compulsion as direct commands to act or refrain from action on pain or 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. [Emphasis added.]

***Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, 1985 CanLII 69 (S.C.C.)**

61. The essence of the guarantee of freedom of association is “the individual’s freedom to choose the path to self-actualization”; it is an aspect of personal autonomy.

***Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211, 1991 CanLII 68 (S.C.C.)**

62. Attribution of the views of a group to an individual – or the desire for non-attribution – is at issue in this freedom. Indeed,

“[i]t is of little solace to a person who is compelled to associate with others against his or her own will that no one will attribute the views of the group to that person. It is quite reasonable for people to object to supporting causes of which they disapprove, whether or not others would believe that they subscribe to those causes.... An external manifestation of some link between the individual and the association is not a prerequisite to the invocation of the right; it is enough that the individual’s freedom is impaired. [Emphasis added.]

***Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211, 1991 CanLII 68 (S.C.C.)**

63. To force a person to associate is to “stifle [their] potential for self-fulfillment and realization as surely as voluntary association will develop it”.

***Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211, 1991 CanLII 68 (S.C.C.)**

64. Indeed, the Supreme Court of Canada has bluntly acknowledged that financially supporting a faith “antagonistic to the existence of one’s own, was a violation of one’s conscience”. It recognized that “this argument was largely made in terms of religious freedom...[but] the underlying reasoning has broader applicability”.

***Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211, 1991 CanLII 68 (S.C.C.)**

65. Some forms of association are unavoidable because of “the facts of life”, for example, in the workplace. In such cases, a person’s freedom of association “will not be violated unless there is a danger to a specific liberty interest such as” one of the following four:

- a. governmental establishment of, or support for, particular political parties or causes;
- b. impairment of the individual’s freedom to join or associate with causes of his choice;
- c. imposition of ideological conformity; and
- d. personal identification of an objector with political or ideological causes which the service association supports.

***Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211, 1991 CanLII 68 (S.C.C.)**

66. A person's guaranteed freedom of association is impaired "when he or she is compelled to contribute to causes, ideological or otherwise, that are beyond the immediate concerns of the bargaining unit". Clearly, the scope and nature of the advocacy objected to by Ms. Comstock falls squarely outside "the immediate concerns of the bargaining unit".

***Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211, 1991 CanLII 68 (S.C.C.)**

67. While in *Lavigne*, there was discussion of the danger of having an opting-out formula, the reasons given in that analysis (e.g., fear of undermining the union's financial base), this case is distinguished from that because here the collective agreement already allows for such opting out.

***Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211, 1991 CanLII 68 (S.C.C.)**

68. While the claimant in *Lavigne* objected to union dues being expended on such things as opposition to the SkyDome, here, Ms. Comstock is making a claim based on deeply and sincerely held religious objections, not an objection that is "frivolous" or based on "distaste", as the Court in *Lavigne* feared would occur.

69. Recent Supreme Court of Canada jurisprudence has recognized that s. 2(d) of the Charter provides constitutional protection to collective bargaining. Likewise, as recognized in *Lavigne*, the right to associate also includes the right not to associate. Union members have the right therefore not to associate with all of the union's advocacy, and the remedy of diversion of dues is the proper vehicle to disassociate from such advocacy.

***Sector Bargaining Assn. v. British Columbia*, 2007 SCC 27**

***Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211, 1991 CanLII 68 (S.C.C.)**

**Violation of Subsection 15(1) – Discrimination on Prohibited Grounds (Religion)**

70. Subsection 15(1) of the *Charter* provides that "[e]very individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without

discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”

71. The Supreme Court of Canada has ruled that the purpose of s.15(1) is to:

“prevent the violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice, and to promote a society in which all persons enjoy equal recognition at law as human beings or as members of Canadian society, equally capable and equally deserving of concern, respect and consideration.” [Emphasis added.]

***Law v. Canada (Minister of Employment and Immigration)*, 1999 CanLII 675 (S.C.C.), [1999] 1 S.C.R. 497**

72. The three-stage inquiry to determine whether impugned government action conflicts with this purpose is as follows:

- a. Does the impugned law (a) draw a formal distinction between the claimant and others on the basis of one or more personal characteristics, or (b) fail to take into account the claimant's already disadvantaged position within Canadian society resulting in substantively differential treatment between the claimant and others on the basis of one or more personal characteristics?
- b. Is the claimant subject to differential treatment based on one or more enumerated and analogous grounds?

and

- c. Does the differential treatment discriminate, by imposing a burden upon or withholding a benefit from the claimant in a manner which reflects the stereotypical application of presumed group or personal characteristics, or which otherwise has the effect of perpetuating or promoting the view that the individual is less capable or worthy of recognition or value as a human being or as a member of Canadian society, equally deserving of concern, respect, and consideration?

***Law v. Canada (Minister of Employment and Immigration)*, 1999 CanLII 675 (S.C.C.), [1999] 1 S.C.R. 497**

73. Firstly, there is a distinction made between Ms. Comstock and advocates of same-sex "marriage". Her freedom of conscience and religion is being given lesser value than the rights of advocates of same-sex "marriage" to be free from discrimination.

74. Even more so, there is a blatant distinction being made by the Treasury Board and the Commission between Ms. Comstock and other employees who have similar or identical religious beliefs as hers, but who are of different religions, ones that are favoured by the wording of the provision of the collective agreement in question. Therefore, Ms. Comstock meets the first prong of the *Law* test because of the distinction being made on the basis of the deeply personal characteristic of religion.

***Kurvits v. Canada (Treasury Board)*, 1991 CanLII 9 (C.H.R.T.)**

***Facey v. Ontario Nurses Assn.*, 2001 CanLII 10750 (O.L.R.B.)**

75. Secondly, the differential treatment is on enumerated grounds: religion. Significant weight should be given to the point made earlier that other Canadians have made similar complaints to the Court, and have received accommodation for their sincerely held religious beliefs in the workplace, but Ms. Comstock has not. Therefore, the fact that similar situations have rendered dissimilar governmental, tribunal, and judicial treatment for Canadian conscientious complainants shows that Ms. Comstock also satisfies the second prong of the *Law* test.

76. Thirdly, the discrimination exists in fact here: there is no substantive equality here for Ms. Comstock, which is what the inquiry must ask at this stage, with the emphasis being on human dignity. Significantly, Justice Iacobucci had this to say about human dignity in *Law*:

Human dignity means that an individual or group feels self-respect and self-worth. It is concerned with physical and psychological integrity and empowerment. Human dignity is harmed by unfair treatment premised upon personal traits or circumstances which do not relate to individual needs, capacities, or merits. It is enhanced by laws which are sensitive to the needs, capacities, and merits of different individuals, taking into account the context underlying their differences. Human dignity is harmed when individuals and groups are marginalized, ignored, or devalued, and is enhanced when laws recognize the full place of all individuals and groups within Canadian society.

***Law v. Canada (Minister of Employment and Immigration)*, 1999 CanLII 675 (S.C.C.), [1999] 1 S.C.R. 497**



77. Ms. Comstock, as an observant Roman Catholic is a "reasonable person, dispassionate and fully apprised of the circumstances, possessed of similar attributes to, and under similar circumstances as, the group of which the rights claimant is a member". Ms. Comstock has made the point several times that the actions of the Respondents, affirmed by the Commission's decision not to even deal with such actions, marginalize and vilify her because of her religious beliefs about marriage, family, and sexuality, and create or perpetuate the impression or belief that people like her are bigoted, narrow-minded, and are of little or no positive value to society.

**Violation of Section 7 – Right to Life, Liberty, and Security of the Person**

78. Section 7 of the Charter provides that "[e]veryone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

79. Liberty under s. 7 involves inherently personal choices, "such that by their very nature, they implicate basic choices going to the core of what it means to enjoy individual dignity and independence". Liberty is more than merely freedom from physical restraint. It includes situations, like this one, involving personal autonomy that is expansive enough to allow for individuals to make inherently private choices without state interference.

***Siemens v. Manitoba (Attorney General)*, 2003 SCC 3 (CanLii), [2003] 1 S.C.R. 6, 2003 SCC 3**

80. In a s. 7 analysis, an examination of the "principle of fundamental justice" is key. Such a principle must be a legal principle considered vital or fundamental to our societal notion of justice, must be identifiable. If the deprivation of a s. 7 right does little or nothing to enhance the state's interest, a breach of fundamental justice will be made out since the individual's s. 7 rights would have been deprived for no valid purpose. Here, whatever the extent the state's interest is in promoting same-sex "marriage", it is not advanced by trampling Ms. Comstock's at least equally valid constitutionally enshrined guarantee of freedom of conscience and religion, and related right to liberty.

***Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519, 1993 CanLII 75 (S.C.C.)**

81. The analysis of section 7 and subsection 15(1) are actually intrinsically tied to the earlier arguments with respect to subsection 2(a) and (d). After all, *Charter* rights are not insular and discreet. They interact, and should not be pitted against each other. Therefore, “a person is not deprived of protection under a provision of the Charter merely because protection may also be derived under another”.

***Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211, 1991 CanLII 68 (S.C.C.)**

***Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772, 2001 SCC 31 (CanLII)**

82. The position of the Respondent union is effectively making a morality-based decision with respect to its members and their rights and liberties both within and without the workplace, on such personal matters as voting choices and beliefs about sexuality, which are often intrinsically linked to religion in many people's minds. That imposition conflicts with Ms. Comstock's liberty rights – including her psychological liberty – in that it imposes an ideology on her that is deeply disturbing and disagreeable to her, forces her to fund it with her union dues, and denies her the chance to avail herself of the opt-out clause in the agreement between the Respondents.

### **Section 1 Analysis**

#### **Onus of Proof**

83. The onus is on the Respondents to prove that on the balance of probabilities, the infringement of Ms. Comstock's s. 2(a) rights can be demonstrably justifiable in a free and democratic society.

***R. v. Oakes*, [1986] 1 S.C.R. 103, 1986 CanLII 46 (S.C.C.)**

***R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713, 1986 CanLII 12 (S.C.C.)**

#### **Importance of the Objective**

84. The objective of allowing dissent for individual members of a union pursuant to the collective agreement deserves respect as it allows for protection of the freedoms of conscience, religion, association and the protection of the life, liberty, security of the person, and

addresses adverse discriminatory differential treatment of conscientious religious objectors.

The objectives are important in a truly free, democratic, and diverse society, and the federal civil service, and its 160,000 union members.

85. Presumably, one of the objectives of Policy 31 is to protect homosexuals from discrimination in the workplace, also a commendable goal if its content itself does not characterize the issue as pitting homosexuals against those religious believers who conscientiously object to homosexual behaviour. However, there is no request or requirement to discriminate against homosexuals in order to grant Ms. Comstock her religious accommodation. The collective agreement at issue appears to recognize that employees can and do legitimately have deeply held, personal views about matters of religious significance to them. It is correct to have as an objective a workplace in which homosexuals are respected. It is quite another matter, however, to assume that those persons who object to homosexual practices or same-sex marriage on religious grounds are either excessively afraid of homosexuals, or are unjustified in their beliefs about the correctness and healthiness of heterosexuality, or both, and breaches federal law. Respect for homosexuals does not require disrespect of religious members of the workplace, and their own human rights, in breach of s. 3.1 of the *Civil Marriage Act*.

Proportionality

86. The deduction of union dues from one member to accommodate her dissent from the union's policies and advocacy is proportionate, and will have only a modest effect on the union's activities, to the extent of roughly \$878/year.
87. The Respondent union chose to discriminate against one group (namely individuals with religious objections to same-sex marriage and homosexual practices) in order to advance the goals of another group (those who do not object to homosexuality and same-sex marriage). Its advocacy must accommodate who are entitled in law to dissent from this activity.

88. Furthermore, it is submitted that the Respondent Treasury Board's failure to include Canadians whose religion may not espouse a doctrinal element to satisfy the provisions of section 11.04 of the collective agreement cannot be sustained in the context of existing federal law.

Rational Connection

89. Likewise, the Respondent Treasury Board's decision to deny Ms. Comstock her application for the diversion of her union dues is not rationally connected to an objective of creating a workplace in which homosexual persons are respected. The collective agreement with the Respondent union specifically anticipates the presence of religious persons within the workplace and specifies an accommodation for those persons. The Respondent union's constitution purports to support non-discrimination based on religion.

Minimal Impairment

90. The provision of the relief sought by Ms. Comstock will have minimal impact on the union's activities, and in fact should be seen as recognition by the union of the non-discrimination provisions of its own constitution.

91. In fact, with respect to discrimination, "there is a duty to make reasonable accommodation for individuals who are adversely affected by a policy or rule that is neutral on its face, and...this duty extends only to the point at which it causes undue hardship to the party who must perform it". No such hardship has been raised here.

***Multani v. Commission scolaire Marguerite-Bourgeoys, 2006 SCC 6 (CanLII)***

92. The Respondents have failed to show that no other means were available to them to carry out their objectives that would have been less intrusive to Ms. Comstock.

***Multani v. Commission scolaire Marguerite-Bourgeoys, 2006 SCC 6 (CanLII)***

**f. The Collective Agreement Provokes Improper Inquiries into the Tenets of a Religious Organization or an Individual's Conscience**

**g. The Commission and the Court Below Erred in Recognizing How the Provisions of PSAC Policy 31 Violated the Appellant's Constitutional Rights.**

93. See previous submissions in paragraphs 28, 29, 32, and 33 above.

94. The total prohibition (the Respondent union's "zero tolerance" policy) does not appear to accommodate dissent from these positions, even where such dissent may be based on doctrinal positions of a particular religion. By its terms, the union policy is non-accommodating. However, adherents of certain faiths have been allowed to divert.

***Kurvits v. Canada (Treasury Board)*, 1991 CanLII 9 (C.H.R.T.)**

***Facey v. Ontario Nurses Assn.*, 2001 CanLII 10750 (O.L.R.B.)**

95. The effect of the Commission's interpretation of section 11.04 of the collective agreement grants benefits and protection of freedoms and liberties to employees of some religions and not others, even if they may share identical conscientious objections.

***Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, 2004 SCC 47 (CanLII)**

***Multani v. Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6 (CanLII)**

***Katter v. Ohio Employment Relations Board et al.* (2007), case no. 2:07-CV-43 U.S. Dist. Ct., S.O. Dist. Ohio, East Div.**

***Beers v. International Association of Machinists, Lodge 610* (2003), case no. 6:01-cv-1270-Orl-18KRS, Middle Dist. of FL, Orlando Div.**

96. The effect is that Ms. Comstock is marginalized, if not vilified, for her sincerely held religious beliefs despite the express provisions of s. 3.1 of the *Civil Marriage Act*.

**h. The Honourable Justice Misconstrued Evidence on the Judicial Review Application**

97. See previous submissions in paragraphs 12, 14, and 21 above.

98. From the analysis above, it is clear that the conclusion of the Investigator, and by extension the Commission, was in error. The Judge below erred in not allowing that decision to be set aside.

**PART IV: NATURE OF ORDER SOUGHT**

99. The Appellant, Susan Comstock, respectfully requests:

- a. an order allowing Ms. Comstock to divert her union dues to the charity of her choice, retroactive to the date of her application;
- b. in the alternative, an order quashing the s.41(1)(c) finding and requiring the Commission to hear her application on the merits; and
- c. the costs of this appeal, the costs of the application for judicial review, and such other costs that may be recoverable.

All of which is respectfully submitted this 10<sup>th</sup> day of August, 2007.

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**PART V: LIST OF AUTHORITIES**

1. *Canadian Human Rights Act* ( R.S., 1985, c. H-6 )
2. *Marriage for Civil Purposes Act* 2005, c. 33
3. *Canadian Charter of Rights and Freedoms*, Schedule B, *Constitution Act*, 1982
4. *Kurvits v. Canada* [1991] C.H.R.D. No. 7; 1991 CanLII 9 (C.H.R.T.)
5. *Clark v. Canada (Attorney General)*, 2007 FC 9 (CanLII)
6. *Slattery v. Canada (Human Rights Commission)*, 1994 CanLII 3463 (F.C.), [1994] 2 F.C. 574, [1994] F.C.J. No. 181 (QL)
7. *Lusina v. Bell Canada*, 2005 FC 134 (CanLII)
8. *Canada (Public Service Alliance) v. Canada (Treasury Board)*, 2005 FC 1297 (CanLII)
9. *Katter v. Ohio Employment Relations Board et al.* (2007), case no. 2:07-CV-43 U.S. Dist. Ct., S.O. Dist. Ohio, East Div.
10. *Beers v. International Association of Machinists, Lodge 610* (2003), case no. 6:01-cv-1270-Orl-18KRS, Middle Dist. of FL, Orlando Div.
11. *Cooper v. Canada (Human Rights Commission)*, [1996] 3 F.C.A. 854
12. *McCormick v. Canada (Minister of Health)*, 2005 FC 754 (CanLII)
13. *Sketchley v. Canada*, 2005 F.C.A. 404
14. *Canada (Attorney General) v. Hotte*, 2005 FC 246 (CanLII)
15. *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, 1999 CanLII 652 (S.C.C.)
16. *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, 2004 SCC 47 (CanLII)
17. *Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, 1985 CanLII 69 (S.C.C.)
18. *R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713, 1986 CanLII 12 (S.C.C.)
19. *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, 1996 CanLII 237 (S.C.C.)
20. *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772, 2001 SCC 31 (CanLII)
21. *Reference re Same-Sex Marriage*, [2004] 3 S.C.R. 698, 2004 SCC 79 (CanLII)
22. *Multani v. Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6 (CanLII)
23. *Siemens v. Manitoba (Attorney General)*, 2003 SCC 3 (CanLii), [2003] 1 S.C.R. 6, 2003 SCC 3

24. *Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211, 1991 CanLII 68 (S.C.C.)
25. *Sector Bargaining Assn. v. British Columbia*, 2007 SCC 27
26. *Law v. Canada (Minister of Employment and Immigration)*, 1999 CanLII 675 (S.C.C.), [1999] 1 S.C.R. 497
27. *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519, 1993 CanLII 75 (S.C.C.)
28. *R. v. Oakes*, [1986] 1 S.C.R. 103, 1986 CanLII 46 (S.C.C.)