

FILE NO. 33495

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE BRITISH COLUMBIA COURT OF APPEAL)

BETWEEN:

CYNTHIA L. MAUGHAN

Applicant
(Appellant)

AND:

THE UNIVERSITY OF BRITISH COLUMBIA
LORRAINE WEIR, JUDY SEGAL, SUSANNA EGAN, ANNE SCOTT
AND THE ATTORNEY GENERAL OF BRITISH COLUMBIA

Respondents
(Respondents)

REPLY TO MOTION TO ADDUCE NEW EVIDENCE
FILED BY THE APPLICANT, CYNTHIA MAUGHAN
(Pursuant to s. 40 of the Supreme Court Act, R.S.C. 1985, c.S-26)

The Applicant (Appellant)

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REPLY¹

Dr. Weir's Academic Freedom and Tenure Committee prepared the final TWU report and it was her committee that advised that TWU be published on a list as a threat to academic freedom in the national CAUT *Bulletin*

1. Contrary to the respondents paras 3, para 8a, and 10. The Canadian Association of University Teachers ("CAUT")'s "Procedures in Academic Freedom Cases Involving Allegations of Requirement of an Ideological or Faith Test as a Condition of Employment" sets out the procedures that were followed for The TWU report. In particular, at **paragraphs "k", "m", "n", and the concluding paragraph (Motion Book, p.7 opening para 1 and p. 18-20)** the procedures specifically establish that it is the Academic Freedom and Tenure Committee who set and approved the procedures for The TWU "investigation". Specifically:
 - a. Dr. Weir's Academic Freedom and Tenure Committee ("AFTC") has responsibility for finalizing the Bruneau-Feildman "investigation" and draft report. **(para "k")**
 - b. Dr. Weir's AFTC "recommend[ing]" that the Christian TWU be placed on a list of institutions because of their "statement of faith" **(para "n" and concluding para)**
2. Contrary to the respondents paragraphs 7 and 8: the new evidence is connected to this case based on the three grounds on Leave to Appeal: **a)** the same unfolding pattern of using specious "procedures" against a Christian university and student; **b)** the respondents' CAUT collective ownership of The TWU "investigation" just as they did in adopting a CAUT collective position against the Christian student; **c)** the CAUT funded faculty defining "religion" and "religious beliefs", etc. contrary to the *Syndicat Northcrest v. Amselem*, 2004 SCC 47 suggesting to the average Canadian that their CAUT has the legal authority to conduct "investigations" by "commissioners" and they have found TWU's statement of faith punishable by public censure, just as they censured The Student in *Maughan v. UBC et al.*

¹ The applicant has reproduced the respondents' response letter/document with para numbers to permit the response to be referenceable. Regarding the respondents' para 2, the respondents did not release the new evidence until after the October Court of Appeal hearing. It was not in the newspapers until after the applicant had filed her leave to appeal preventing it from being included in the leave to application

a) The Same Unfolding Pattern of Specious “Procedures” against Christians who express or are suspected of having a statement of faith

3. Dr. Weir’s AFTC followed the same procedures as was followed against The practicing Christian Student: 1) proceeding as if there were an official complaint with a refusal to resolve the matter; 2) an “investigation” 3) a national *Bulletin* finding the Christian university and student a “threat to academic freedom ” (**Leave to Appeal, p. 1 para b. iv; p. 5-6, paras 10-13; p. 8 para 20-29 and p. 17-18 para 70-74; and Motion Book, p. 32 paras 1-7 and p. 33 paras 4-8.**)
4. Both matters began because The TWU (publically) (**Motion Book, p. 8-10**) and The Student (initially, privately) both expressed evangelical Christian “statements of faith” (**Leave to Appeal, p. 2 paras 2-3**).
5. The CAUT funded respondents prepared reports about The Student: The June Email (**Leave to Appeal p. 5 para 10**) and Senate Reports (**Leave to Appeal, p. 8, para 20 and p. 8 para 21-27**) and The TWU (**Motion Book, p. 7-17**)
6. Both The Student and The TWU were published in the CAUT funded faculty’s *Bulletin* as a threat to academic freedom:
 - a. The Student through Dr. Weir’s *Bulletin* “media work” and in national and international journals as a “fundamentalist Christian” as a threat to academic freedom ² (**Trial Judge’s Ruling on Admissibility of Documents, Leave Book, Tab , in particular at p. p. 84 para 5 and p. 88 para 8 and Trial Judge’s Reasons, p. 213, paras 311-317**) and www.caut.ca
 - b. The TWU through Dr. Weir’s AFTC ³ finalized and advised that the Christian TWU be put on the list through the CAUT *Bulletin*. (**Motion Book, p. 17**). www.caut.ca
7. The intention to continue to promote the inferiority and contempt of Christians based on their religious beliefs is in the evidence of The Collective Interrogatory (**Leave Book, Tab 8, p. 174-185**) which was put to the individual respondents Weir, Segal, Scott and Egan individually. They chose to answer as a Collective (**Trial Judge’s Reasons, Leave Book, Tab 8, p. 184, para 7-8**). The individual respondents refused to withdraw when given opportunity.

² The Student placed the evidence before the lower Courts that the report about The Student is false and fabricated for which the applicant seeks Leave to Appeal. (Leave Book, para 1. b. ii; para 2 b. ii and j; para 4.c.; para 8-9; para 16; para 26; para 49.

³ It is not in dispute that Dr. Weir is the AFTC at the material time of the new evidence. Response, para 6 b.

b) The respondents Segal, Egan, Scott and Weir's demonstrate ownership of The TWU "investigation" for its Christian "statement of faith" and national listing of The TWU as a threat to academic freedom

8. At the response para 1, each of the respondents Dr.s Scott, Segal, Egan and Weir clear up any doubt that they own and defend their CAUT "investigation" and "listing" of TWU.
9. Put another way, Dr.s Egan, Scott, Segal and Weir could have as easily responded individually to say that they take no position on the investigation and listing of TWU as a threat to academic freedom, as the respondent BC Attorney General's Office has done.
10. Instead, Dr.s Egan, Scott and Segal each voluntarily reinforce their ownership and defence of the "investigation" and listing of TWU arguing that:

On any reasonable interpretation, the report is not an attack on Christian academics or Christian universities, but rather a legitimate critique of an employment policy of TWU. Professors Bruneau and Freidman conclude that, (please see above review by the Academic Freedom and Tenure Committee) unlike other Christian universities, which welcome applications by persons of no religious or different religious views, TWU seeks to create a religiously homogeneous academic community in which academic freedom is recognized only within the parameters of a Christian perspective.

c) The CAUT Faculty are asserting specious authority to define what is a "religious view", what is a "religious perspective" etc that is contrary to the Supreme Court of Canada's decision in *Syndicat Northcrest 2004 SCC 47*, and to punish Canadian Christians based on CAUT's definitions.

11. In response to the respondents concluding para 19, the applicant submits that the "investigation" of TWU and of The Student does reflect the public and national importance of the underlying nature of the Leave to Appeal. The respondents are asserting a specious authority to conduct "investigations" in the absence of a complaint by "commissioners" who can wield punishment through their CAUT media resources as public censure, just as they have done to The Student.
12. The CAUT funded faculty are not only assuming the authority to define the terms, but they are overtly conducting these "investigations" based on their suspicions and speculation. In the case of The Student, they speculated that she was secretly inspired to do the research because she was insulted at the cannibalism joke, even though the evidence of her paper was that it was an "outstanding" linguistic research paper.

13. Contrary to the respondents' para 4, the “investigation” of TWU was not limited to issues of employment for faculty. The “investigation” of The TWU included the “university community” (faculty, students). (**Motion Book, p. 10 paras 3-5**). After citing academic freedom at TWU for teachers and for students, the “commissioners” conclude:

On the basis of these documents alone, there is no question that [TWU] violates the commitment to academic freedom that is the foundational bedrock of the *university community* in Canada and internationally. (emphasis added) (**Motion Book, p.10**)

14. This is supported by CAUT's statements: “A university is meant as a place to explore ideas, not to create disciples of Christ”. (**Motion Book, p. 31, last sentence**). The issue is not CAUT protecting its faculty from the TWU administration. The subject of inquiry by Dr. Weir's AFTC report is whether “disciples of Christ” are being created at TWU.
15. Needless to say, it is well accepted that the education at a public post modern university is to indoctrinate students to “mature” past religious “mythology” in favour of aesthet scholars such as Derrida. Many would say, dedicated Derridian scholars such as Dr. Weir and Scott frame and limit research according to Derridian teaching and assume that Derrida would not misquote the Bible and if he did, it was for a good and educational purpose. (Leave to Appeal, Reply, (Transcripts, (top of page numbering, p. 29-30, p. 78—82, 89-90, p. 128-131, Trial Judge's Reasons). When The Student did not accept this framework for research she suffered the consequences of The Collective Interrogatory.
16. The applicant submits that what is the “threat to academic freedom” is the CAUT funded faculty respondents' persistence to knowingly publish false statements not only about The practicing Christian Student, but to censure and suppress her Derrida-Holy Eucharist Paper (**Leave to Appeal, para 1 b.ii**) research that proved Derrida's misquotation of the Bible in support of a false thesis about what Christ said at the Last Supper.
17. In response to para 17 and 18, the applicant agrees that the appeal would not be a continuation of the trial. Rather the issues of evidence are questions of law.
18. Does the TWU Report provide further context of the national and public importance of the Leave to Appeal. Does the TWU Report falsify the trial Judge's 2008 decision, in which he considered the possibility of any evidence:

I see no evidence capable of bridging that inferential gap. There is no evidence that Dr. Weir is anti-Christian. There is no evidence that she has taken at other times a public stance against Christians or an individual Christian or sought to foment deep

emotional antipathy to them in order to interfere with their right to respect and dignity. (emphasis added) Para 363

19. While the CAUT Faculty respondents' may be merely misguided in thinking that having a Christian statement of faith is to say that a Christian institution or individual student thinks academically only within the parameters of a "Christian perspective", the CAUT Faculty position is a dangerous one in a Canadian democracy who historically trusts and respects the authority of an organization of a national organization of Canadian university professors.
20. The trial Judge's *Reasons* at para 71 did not include The Student's testimony accompanying the authenticated record which the trial Judge only partially quoted and summarized. The Christian Student repeatedly advanced her position at trial that her Christian beliefs are diametrically opposed to a closed mind to *any* academic question. The CAUT Faculty's suggestion to the opposite is a fabrication for their purpose of publicizing the practicing Christian Student as a threat to academic freedom.
21. Attached to this reply at pages 6-8 are The Student applicant's testimony at trial and submissions to the Court of Appeal on the issue of academic freedom, which testimony has new significance given the "investigation" and listing of TWU as a threat to academic freedom.

ALL OF WHICH is respectfully submitted this 1st day of March, 2010.



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184
C Maughan (the Plf)
Testifies

1 in sort of focusing on records relevant to the
2 production of that paper. So that's where the
3 paper is that I wrote --
4 THE COURT: All right.
5 A -- starting at page -- did you want me to give you
6 the -- describe the e-mails that proceeded between
7 January 30 and the date I handed in that paper on
8 February 6, or just go right to that paper right
9 now because that is -- that describes my recording
10 of the events of the class.
11 THE COURT: Well, they're all behind the same tab, are
12 they?
13 A Yes.
14 THE COURT: All right. Well, I think the point simply
15 should be made that the paper which appears at
16 pages 982 through to and including -- yes, 988,
17 will form an exhibit in these proceedings.
18 A Okay.
19 THE COURT: I think now you can turn your attention to
20 what occurred between the class and the writing of
21 the paper, and that may involve a discussion of
22 these e-mails. All right?
23 A Okay. Okay. All right, yeah, so the next -- stay
24 in the same sequence. Maybe I -- I referred to
25 the John Cooper e-mail at tab 42, specifically
26 looking for the -- you know, the past recollection
27 recorded aspect of it.
28 But there are some parts of that e-mail I'd
29 like to point out to -- certainly these would be
30 the parts of that e-mail that I think are
31 important, that some of them are my direct
32 recollection, some of them I do remember having
33 my -- because my memory was refreshed, the ones
34 which are past recorded that I don't have a
35 recollection of I've already identified.
36 So at page 969, I just sort of -- I gave you
37 my narrative of what happened in that class, and I
38 recount pretty much the whole situation to
39 Dr. Cooper.
40 THE COURT: Yes.
41 A And it starts out:
42
43 I had a really kind of shocking experience in
44 553 seminar today,
45
46 wanting his opinion on what happened. I --
47 generally seeking his opinion, and quote to him

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185
C Maughan (the Plf)
Testifies

1 the passage from Derrida's essay, Passions, an
2 Oblique Offering, and I describe that -- you know,
3 I comment -- as I say it, you know:
4
5 It's intense, "sacrilege", but I can honestly
6 deal with this because I know that if I can't
7 listen to an argument against Christianity,
8 then I have no faith, no mind, no free will,
9
10 and etcetera,
11
12 ... so I'm always happy to hear arguments
13 against Christianity. The problem with this
14 passage is that there was a misquotation,
15
16 and I go on to describe the academic point that
17 was -- that I had put to the class about the
18 misquotation and the fact that I'm saying, Is this
19 sloppy work by Derrida and the Stanford Press or,
20 you know, what's happening here.
21 At the top of page 970, I -- I say to him,
22 you know -- sorry, maybe start that sentence at
23 the bottom of 969:
24
25 He is using the Holy Sacrament to make a very
26 contentious and intense point by any measure,
27 going right to the heart of theology, and he
28 gets the quote wrong.
29
30 So I -- this -- this is my recollection, my direct
31 recollection, and it's also my direct recollection
32 of being stunned, you know, when I got the
33 response that, you know, How dare you question
34 Derrida?
35 I say, you know:
36
37 The defence was to try and put me in a
38 too-sensitive, self-righteous Christian box.
39
40 I -- I don't have -- I guess that would fall into
41 the third category. I don't know what prompted
42 me -- you know, I don't have a recollection of
43 somebody saying, you know, You're a self-righteous
44 Christian. I don't remember that, but I did write
45 this that day, so -- and I -- you know, I
46 repeatedly said I was taking issue on an academic
47 level with Derrida's discretion (sic) of

- 1 Christian beliefs be debated?
- 2 A Okay. As I said at the time in an e-mail to John
3 Cooper dated January 30th, this is obviously very
4 intense sacrilege. I can honestly deal with this
5 because I know that if I can't listen to an
6 argument against Christianity, then I have no
7 faith, no mind, no free will and et cetera, so I
8 am always happy to hear arguments against
9 Christianity.
- 10 Q So it's okay to debate Christian beliefs --
- 11 A If I can't -- if I can't listen to an argument
12 against Christianity, I -- that's, what's the
13 point? Then I would be an automaton, and I would
14 just be walking around with this preloaded Bible
15 in my head, and so no, I can always -- that, I
16 think is --
- 17 Q And if somebody then dismissed your argument, your
18 academic argument, because of your religious
19 beliefs, that's okay?
- 20 A Well, the thing that I know -- and I think I've
21 said this before in this court -- I know there's a
22 living god, so no one is going to be able to
23 convince me that that's not the case, but I can
24 understand if somebody says here is something that
25 Christian religion has accepted as fact for
26 centuries and I'm challenging that, let's hear it.
27 Let's just put it out there. What is it? Because
28 I -- you know, so that is certainly legitimate.
29 As I said at the time and I say today, if I can't
30 listen to arguments against Christianity, then,
31 you know, you're kind of done at that point. So
32 but --
- 33 Q I'm not sure you've answered my question.
- 34 A I think I answered it directly.
- 35 Q And that is yes, it's okay to dismiss someone's
36 academic argument because of their religious
37 beliefs.
- 38 A Okay. That was, I think, the second to last
39 question you asked me, and I think I answered it.
40 So say to me again your question.
- 41 Q Ms. Maughan, the answer is simple. If somebody
42 criticizes your academic argument and says that
43 argument is hogwash, it's just coming from you
44 because of your Christian beliefs, that would be a
45 point of debate. You would say no, that's
46 ridiculous, it's not coming from my Christian
47 beliefs at all. So that -- all I'm saying to you

RESPONSE OF THE RESPONDENTS:

WEIR, EGAN, SCOTT, AND SEGAL

Reply to: Brue Elwood
Our File No. 1991-001
VIA FAX

February 22, 2010

Supreme Court of Canada
301 Wellington Street,
Ottawa ON K1A0J1
Attention: Roger Bilodeau, Q.C.

Dear Sir:

Re: Maughan v. UBC et al.

Supreme Court of Canada File No. 33495

1. We act for the Respondents Lorraine Weir, Susanna Egan, Anne Scott and Judy Segal (the "Faculty Respondents").
2. The Applicant, Cynthia Maughan, has applied to adduce new evidence in support of her application for leave to appeal. The motion was delivered to us after we had filed our response to the application for leave to appeal. We write pursuant to Rule 49 to provide a brief statement of our position opposing the introduction of this new evidence.
3. The proposed new evidence is a report written by William Bruneau and Thomas Friedman for the Canadian Association of University Teachers ("CAUT").
4. The subject of the report is whether Trinity Western University ("TWU") requires a commitment to a particular ideology or faith as a condition of employment.

5. CAUT has adopted procedures for investigating such matters, reflecting its position that academic freedom is threatened when a university requires its faculty to subscribe to a particular religious belief.
6. The only connection between the new evidence and this case is that:
 - a. the Faculty Respondents are members of CAUT,
 - b. the Respondent Dr. Weir sits on the CAUT Academic Freedom and Tenure Committee, and
 - c. CAUT has provided funding for the legal representation of the Faculty Respondents.
7. Based on the most tenuous of connections, Ms. Maughan submits that the report is evidence that the Faculty Respondents are “purposefully and intentionally promoting the inferiority and contempt of Christian academics” (Motion, at paras 14 and 22).
8. The submission is – frankly stated - outrageous: not only does it:
 - a. grossly misrepresent the work of Professors Bruneau and Freidman, but it also
 - b. seeks to extend the supposed anti-Christian sentiments of the authors to the Faculty Respondents personally, and,
 - c. by extension, all 65,000 members of the CAUT.
9. On any reasonable interpretation, the report is not an attack on Christian academics or Christian universities, but rather a legitimate critique of an employment policy of TWU.
10. Professors Bruneau and Freidman conclude that, unlike other Christian universities, which welcome applications by persons of no religious or different religious views, TWU seeks to create a religiously homogeneous academic community in which academic freedom is recognized only within the parameters of a religious perspective.
11. Whatever the merits of this conclusion, it has no bearing on the issues in this case, let alone the application for leave to appeal.

12. The issue in this case was whether Ms. Maughan was subjected by the Faculty Respondents to discriminatory and harmful treatment on the basis of her Christian faith.
13. A report for CAUT in 2009 on academic freedom at TWU does not:
 - a. shed any light on the conduct or states of mind of the Faculty Respondents during the material times in 2001 and 2002; nor
 - b. does it provide any assistance on whether this case raises a question of sufficient national or public importance to warrant consideration by this Court.
14. The nature of an appeal to this Court – if leave were to be granted – would not be a continuation of the trial.
15. The need for certainty and finality leaves no room for new evidence of the kind tendered by Ms. Maughan. As the Court of Appeal noted when it rejected the ‘volumes’ of new evidence that Ms. Maughan sought to introduce in that court – much of it of a similar vein concerning ‘false reports’ by CAUT – it would undermined the purpose of a no evidence motion to permit Ms. Maughan to lead further evidence on appeal in an effort to bolster her case. (Reasons of Court of Appeal, paras 122-123, Leave to Appeal, Vol. III, pp. 359-60).
16. The report was published in October 2009, well after the conclusion of the trial.
17. The usual rules for the introduction of fresh evidence, to which Ms. Maughan refers in her motion, do not apply.
18. Evidence of this kind will only be admitted in rare cases, where the trial judge made assumptions about future events, and then, before an appeal was heard, those assumptions are shown by the course of events to be false, which is clearly not the case here. *Jens v. Jens*, 2008 BCCA 392 300 D.L.R. (4th) 136, paras. 28-29.
19. This motion to adduce new evidence reflects the underlying nature of the application for leave to appeal. Ms. Maughan continues to advance serious allegations against the Faculty Respondents based on inferences that cannot

be sustained on any reasonable interpretation of the evidence. Her attempt to adduce this evidence underscores the fact that Ms. Maughan's application for leave to appeal reflects her unfounded suspicion of an "unfolding pattern" of "false publications" by the Faculty Respondents, rather than any issue of national or public importance.

20. The motion to adduce new evidence should be dismissed, with costs.

Respectfully submitted,

ARVAY FINLAY

Per:

Bruce Elwood

(signed by assistant in the writer's absence)

BCF/nb

c.c. Ms. Cynthia L. Maughan

Roper Greyell LLP Attn: Thomas A. Roper Q.C. and Jennifer Stemshorn-Russell

Ministry of Attorney General Legal Service Branch- Civil Litigation; Attn:

E.W.Heidi Hughes