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 THE UNIVERSITY AND FACULTY RESPONDENTS RESPONSE ON THE APPLICATION FOR LEAVE TO APPEAL FILED BY THE APPLICANT, CYNTHIA MAUGHAN

(Pursuant to s. 40 of the Supreme Court Act, R.S.C. 1985, c.S-26)

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REPLY TO THE RESPONSE OF THE FACULTY RESPONDENTS

1. Contrary to the University and Faculty's opening statements, the applicants Leave to Appeal does not make subjective interpretations, and she is not misunderstanding. (Paragraph 1 of The University and Faculty.). The applicant recognizes that self-represented litigants are often an easy target for this type of argument by opposing counsel. It is a strategy that has been well used against the self-represented applicant in this case.
2. The applicant submits that she has an M.A. from The University, was on its Dean's List, and has spent the past seven years immersed in the law. While she may not be a lawyer[1], at the very least, it must be assumed she is capable of drawing at least a common understanding from the lower Courts' *Reasons for Judgment.*
3. For example, the applicant knows that if one of the primary claims and basis of appeal in the lower Courts (please see **Vol. III, Tab 21, p. 442-443, Tab 22, p. 493-498 and p. 504)** is that the Faculty Instructor Assessed The "practicing Christian" Student's "overall performance" for having an "agenda of resistance" because she abstained from a Sunday class, and wrote graduate research proving the misquotation of the Bible, one should at least be able to find a reference to the claim for "agenda of resistance" and related evidence (i.e. the admissions of truth, the authenticated document of the Assessment) in the *Analysis and Discussion.* (Leave to Appeal Para 2.) Plainly, justice has not been served in these *Charter* issues of public and national importance.
4. As to the University's paragraph 1 argument that the applicant is misrepresenting the *Reasons*, as can be easily determined on the face of them: it is the applicant's Leave to Appeal which quotes directly from the *Reasons* of the lower Courts; and, it is the respondents' Responses that summarize and interpret the *Reasons*, but do not quote from them.
5. In the below, the applicant explicitly juxtaposes the respondents' summaries and characterizations with quotations from the lower Courts' *Reasons*.
6. Consistent with their approach in the lower courts, the respondents' Response documents misstate the issues, provide their interpretations of the evidence framed as fact, and branch off

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[1] British Columbia has very recently introduced legislation that provides resources for civil litigants, outside of family law cases. The applicant has also been advised by others that should Leave to Appeal be granted, legal counsel would be available to present her appeal to the Supreme Court of Canada.

into aspects of the case that are not at issue in the over one hundred pages of evidence that they introduce in their Response document. The result is confusion and complexity.

7. For example, in The University's paragraphs 26-27, the respondents suggest the false premise that the applicant is seeking Leave to have the Supreme Court of Canada weigh evidence. Plainly this is not the case, and would result in dismissal of her Leave to Appeal.

Ground 3: Repeated Failure To Refer To Material Fact Evidence In The Lower Courts

8. As stated plainly and explicitly in her Leave to Appeal, the applicant re-asserts that she is *not* seeking Leave to Appeal to have the Supreme Court of Canada weigh or review the evidence.
9. What is at issue is an issue of law: the lower courts failed to refer to or consider material fact evidence, (Leave to Appeal, para 1, in particular par 1 d. and paras 76 and 81), unrelated to the weighing, interpreting or reviewing of evidence.

> This appeal is focused and limited to: the issue of admissions of truth, which are not open to discretionary exclusion by a trial Judge; the authenticated records (identified in para 1); and, The Collective Interrogatory which the trial Judge explicitly accepted into evidence. (Paragraph 1.d)

Ground 1: *Charter* valued rights and freedoms on Canadian University Campuses

Assessing and Directing Graduate Research on the Basis of Religious Beliefs and Practices:

10. To return to the issue as it was stated by the applicant in the Leave to Appeal:

> Without the same *Charter* rights and values protection of The University and Faculty, justifications can be made for University faculty to assess a student's performance, not based on academic merit, but based on faculty's speculation or opinion that "religious convictions" and" "matters of faith" "impair their academic analysis and judgment," protected by Faculty's free speech rights. The trial Judge's decision was communicated by The Canadian Association of University Teachers to its Canadian faculty in an assertion that students may be assessed on their religious beliefs so long as the assessment does not exceed the threshold of hate speech. (p. 602, first full paragraph) (Leave to Appeal, Para 58)

11. The applicant appealed this ground on the basis of the trial Judge's findings, for which the Court of Appeal did not give *Reasons* presumably because it fell into the "not sufficiently meritorious to warrant a discussion" category (Court of Appeal *Reasons* para 69)

> **Trial Judge's *Reasons*** During the course of this seminar and, particularly in her comments on [The Student]'s final paper [The Assessment for "overall performance" as an "agenda of resistance], [The Faculty Instructor] did refer to [The Student]'s religiosity in effect asserting that [The Student] allowed matters of faith to impair her academic analysis and

judgment. It could not be said that there was no basis in the evidence justifying that conclusion. (Para 370)

Trial Judge's *Reasons* [T]he effect of [The Faculty Instructor's] refusal to change the colloquium [and fulfill the Sunday Class Accommodation Agreement] affected [The Student because of] her religious scruples. (Para 352)

Trial Judge's *Reasons* [W]hile [The Assessment] may reflect [The Faculty Instructor]'s view (right or wrong) that [The Student]'s religious convictions impaired her willingness to fully participate in the seminar, that view does not equate to evidence of an intention...(Para 354

Trial Judge's *Reasons*: None of the flashpoints in the June emails evidences bias against [The Student] as a Christian. Rather, the flashpoints relate to [The Student]'s conduct in the seminar [abstaining from the Sunday Class], her attitudes towards Derrida and his writing [The Derrida-Holy Eucharist Paper, her views on the early experience of Christians with First Nations people....There is no evidence that [The Faculty Instructor] regarded the shortcomings she ascribed to [The Student] as intrinsic to her Christian religion. (Para 365)

12. The Faculty Respondents assert that:

Faculty Respondents: [T]he Faculty Respondents have never asserted a right to assess a student on the basis of his or her religious convictions. (Faculty Response, Para 27)

13. This is a preposterous assertion by the respondents who, with the precedent they sought in the Courts below now in hand, may wish to soften this "victory" (please see C.A.U.T. *Bulletin*, below) in their Responses so as to blur their purposes and not make it seem to be the overt civil right and *Charter* violation that it is.
14. Plainly, The Faculty Instructor "assess[ed]" the "overall performance" of a known "practicing Christian" Student as having an "agenda" of resistance" for "refus[ing" to attend" a Sunday Class ("The Sunday Class"), and for writing "outstanding" linguistic research, but which successfully proved the misuse of a quotation of the Bible. ("The Derrida-Holy Eucharist Paper"). This is the crux of the entire case that began the matter. (Leave to Appeal, Para 2).
15. In finding in favour of the respondents on this issue, the trial Judge found that:

Trial Judge's *Reasons*: During the course of this seminar and, particularly in her comments on [The Student]'s final paper [The Assessment for "overall performance" as an "agenda of resistance], [The Faculty Instructor] did refer to [The Student]'s religiosity in effect asserting that [The Student] allowed matters of faith to impair her academic analysis and judgment. Para 370

16. However, the trial Judge dismissed what would be intentional *prima facie* discrimination based on religion by an adjunct faculty of law-Faculty Instructor, because he found it to be truthful. In spite of the respondents' saying it isn't so, the trial Judge's *Reasons* speak for themselves.

Faculty Respondents: The trial Judge did not 'justify' an assessment of [The Student] on the basis of her religious beliefs or practices. (Para 26)

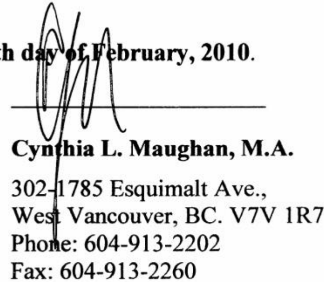
> **Trial Judge:** [The Faculty Instructor] did refer to [The Student]'s religiosity in effect asserting that [The Student] allowed matters of faith to impair her academic analysis and judgment. It could not be said that there was no basis in the evidence justifying that conclusion. *Reasons*, para 370 (emphasis added)

17. This "victory" of Assessing Students based on "religion" was placed on the public and national stage by the collective faculty respondents' Canadian Association of University Teachers ("The C.A.U.T.") who has funded the faculty respondents throughout, and published multiple other national *Bulletins* on this case, some of which are referred to in the trial Judge's "Ruling on Admissibility of Documents" and The Faculty Instructor (Dr. Weir's "media work" for The C.A.U.T. (Leave to Appeal, Tab 7, page 81-93), and on The C.A.U.T. website. (www.caut.ca). The Faculty Instructor is on the Academic Freedom and Tenure Committee of The C.A.U.T. (Leave to Appeal, Tab 24, p.594) In particular, at Leave to Appeal, Tab 24, p.600-602, The C.A.U.T. states:

> A six-year battle in which a student's lawsuit threatened academic freedom has come to a victorious end for four faculty members at the University of British Columbia...The most significant aspect of the decision to dismiss Maughan's case was the court's appreciation of the perceptible risk to academic freedom of expression in Maughan's claim...
>
> [T] the court pointed out that critique of academic work is the role of academics.
>
> The court argued that while critique may cause discomfort for students at times, especially when dealing with challenging subject matter, and that discomfort may arise from their religious beliefs, it is not the role of the courts to supervise that dialogue or academic critique and academic process in the absence of some clear evidence of promotion of hatred on the basis of religion. (http://www.cautbulletin.ca/en_article.asp?articleid=380)

18. New Evidence Motion. Please see also the New Evidence Motion regarding The Collective-C.A.U.T. Faculty respondents' now developing pattern of attacking academics who assert a statement of faith as a "threat to their academic freedom". It is a pattern that cannot be tolerated in a free and democratic society.

ALL OF WHICH is respectfully submitted this 15th day of February, 2010.



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REPLY TO THE RESPONSE OF THE UNIVERSITY RESPONDENT

Findings based on "religiosity" and "religious scruples" to justify violations of *Charter* freedoms, rights and values based on "religion"

19. The University Respondent asserts that:

> Contrary to Ms. Maughan's assertions, the Trial Judge did not make any finding distinguishing 'religious scruples' or 'religiosity' from religion....These and other statements by Ms. Maughan reflect a misunderstanding or misrepresentation of the reasons for judgment. (Para 34)

20. In spite of the respondents denial of it, in finding in their favour, the trial Judge explicitly delineates the terms and the basis of his ***Reasons*** by repeatedly referring to: "religiosity;" "religious scruples"; and, the "conduct" of The Student which forms her religion (i.e. her Sunday observance, and the graduate research of the Derrida-Holy Eucharist Paper),[2] as delineated from "religion". Again, the Court of Appeal left this primary basis of appeal unreviewed which presumably fell into the "not sufficiently meritorious to warrant a discussion" category (Court of Appeal *Reasons* para 69)

> **Trial Judge's *Reasons***: During the course of this seminar and, particularly in her comments on [The Student]'s final paper [The Assessment for "overall performance" as an "agenda of resistance], [The Faculty Instructor] did refer to [The Student]'s religiosity *Reasons* of the trial Judge (Para 370) (emphasis added)
>
> **Trial Judge's *Reasons*** [T]he effect of [The Faculty Instructor's] refusal to change the colloquium [and fulfill the Sunday Class Accommodation Agreement] affected [The Student because of] her religious scruples. (Para 352) (emphasis added)
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> **Trial Judge's *Reasons*:** None of the flashpoints in the June emails evidences bias against [The Student] as a Christian. Rather, the flashpoints relate to [The Student]'s conduct in the seminar [abstaining from the Sunday Class], her attitudes towards Derrida and his writing [The Derrida-Holy Eucharist Paper], her views on the early experience of Christians with First Nations people....There is no evidence that [The Faculty Instructor] regarded the shortcomings she ascribed to [The Student] as intrinsic to her Christian religion. (Para 365) (emphasis added)

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[2] Please see also paragraph paragraphs 60-61 of the Leave to Appeal on this issue. The respondents Responses maintain their position advanced at trial that because the student stated from the very inception of the matter that she does schoolwork on Sundays and does not attend church regularly, it is within Faculty's discretion, as adopted by The University, that she not free from harm and reprisal for abstaining from The Sunday Class because it was not an objection based on "religious objection" (Faculty Respondent's para p. 3, [7], [8] and p. 5 [12], and Notice of Constitutional Questions Act Leave to Appeal, Vol. II, Tab 19)

21. The trial Judge did make his findings based on "religious scruples" and "religiosity" as distinguished from religion. To further clarify this point, if "religion" is substituted in the trial Judge's *Reasons,* the trial Judge's "inferential gap" collapses, and the case could not be dismissed on a no evidence motion.[3] This is exemplified in the following paragraphs in which "religion" is substituted for "religiosity" and "religious scruples":

> **Trial Judge:** [T]he effect of [The Faculty Instructor's] refusal to change the colloquium [day from Sunday, fulfill the Sunday Class Accommodation Agreement] affected [The Student because of] her **religion** (Para 352)
>
> **Trial Judge:** [The Faculty Instructor] did refer to [The Student]'s **religion** [in her comments in "The Assessment"] in effect asserting that [The Student] allowed **religion** to impair her academic analysis and judgment" (Para 370) (emphasis added)
>
> **Trial Judge's *Reasons*** [W]hile [The Assessment] may reflect [The Faculty Instructor]'s view (right or wrong) that [The Student]'s **religion** impaired her willingness to fully participate in the seminar [her conduct of abstaining from the Sunday Class], that view does not equate to evidence of an intention...(Para 354) (emphasis added)

22. Contrary to the repeated statements of both the University and Faculty Respondents, it is the opinion of The Canadian Association of University Teachers that these are issues of public and national importance as set out in the national *Bulletin* to all Canadian faculty, as cited above.

Ground 2: Vitiating the Duty of Care in a Student Grade Appeal

23. Contrary to the respondents arguments, the issue that is of national and public interest is that faculty's duty of care can be vitiated in a student grade appeal (Leave to Appeal, para 68)

24. The lower courts have set a precedent that the University and Faculty may, in the absence of an actual complaint, and even if The Student refuses to make a complaint, they may make an *ad hoc undisclosed* determination a Student's grade appeal *amounts to* a "Complaint", [4] and they may do so without any notice to the student or policies informing students of their rights. (Leave to Appeal, paragraphs 84-85)

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[3] Particularly when it is combined with the admission of truth of Dr. Weir's professorship as an adjunct professor in the faculty of law (Leave to Appeal para 3 b) was not referred to or considered in the lower courts.

[4] In spite of the University's continued attempts to perpetuate the notion that there ever was a Complaint of "discrimination or bias" (University para 7 and 8), The Student in fact refused to make a complaint. Please see para 12 sub para 19 of the Court of Appeal's *Reasons* and page 326 of the Leave to Appeal Book. The Student made a grade appeal.

25. Allowing faculty and the university to unilaterally change a student's grade appeal into a complaint allows:
    a. faculty to garner their legal counsel and union power against the student if they don't like the student's race, religion or gender, place of origin, etc. and permitting them to make "even malicious and dishonest reports", for example, "attacking (The Student's) character for mental and emotional stability and for religious tolerance"...descend[ing] well beneath the current standards of *Charter* values" **(Vol I, Tab 3, page 15) based on** absolute immunity and a vitiated duty of care.
    b. the University to escape vicarious liability for the bad faith conduct and communications of their faculty under s. 69 of the *University Act.*
26. Please see also the New Evidence motion for this same pattern of creating a complaint where one does not exist in order to proceed as if there were a formal complaint. The most recent example is again targeting Christian academics who assert a "statement of faith."[5]
27. Lower Courts findings which Vitiate the Duty of Care in a Grade Appeal: In spite of the respondents' denial of the fact, the lower courts dismissed the case by distinguishing it from *Young v. Bella* because the Student's grade appeal amounted to a "complaint" and "allegations" and the creation of an "adversarial relationship" all of which was the *undisclosed* opinion of the respondents.

> **Trial Judge's** *Reasons* [W]hatever duty and standard of care may have governed [The Faculty Instructor]'s relationship with [The Student] before [The Student] launched her allegations of religious bias did not prevail thereafter, as a person in the position of [The Faculty Instructor] has the right and the duty to address allegations made against her in a way quite different from addressing issues arising in a non-adversarial professor/student relationship. (Para 438)

> **Trial Judge's** *Reasons*: Thus in this case, unlike the circumstances in *Young v. Bella*, the relationship said to found a duty and standard of care was an adversarial one framed by the plaintiff's serious allegations against [The Faculty Instructor] [during both The Student's grade appeal and post-lawsuit][6] and requiring proof of

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[5] An issue of error is that the Court of Appeal acknowledged that there never was a complaint made by The Student (for example, Para 20 sub para 19) , but failed to give *Reasons* for why it did not overturn the trial Judge's decision which rested on the fact that there was a "complaint" or what amounteed to a "complaint" of of "allegations" of "religious bias or discrimination", which is plainly false.

[6] Unlike the Court of Appeal which distinguished between pre and post lawsuit, the trial Judge collapsed the time period prior to the lawsuit and post lawsuit and treated them as the same in considering whether the duty of care was vitiated. (Transcripts and court of Appeal reasons)

> bad faith, or quasi criminal conduct. In these circumstances I conclude that the proximity that might otherwise be found to exist in the professor student relationship is vitiated. (Para 436) (emphasis added)

28. The Court of Appeal upheld the trial Judge's vitiating of the duty of care:

> **Court of Appeal's *Reasons*:** [The trial Judge] distinguished the *Young* decision (i.e. "unlike the circumstances in *Young v. Bella*, the relationship said to found a duty and standard of care was an adversarial one framed by the plaintiff's serious allegations against [The Faculty Instructor]") upon which Ms. Maughan relied (both with respect to whether there was a duty of care, and whether there was evidence of a breach of that duty)...we are not persuaded that the trial judge erred in concluding that there was no evidence that Dr. Weir had acted in bad faith in relation to any of the matters alleged against her during that time. (Para 103-104)

29. Moreover, the lower courts are permitting the duty of care to be vitiated on grade appeals with no requirement of a policy to notify students that this may occur and what their rights and responsibilities are. This cannot be tolerated in a free and democratic society. Addressing what the University labels "litigious students" (Para 22), is asserted by The University's Canadian Association of University Solicitors and Association for Canadian Universities and Colleges as a perilous public issue of national importance in the article "When Studies Sue." (Leave to Appeal, Vol. III, Tab 24, p. 584)

Brief Correction of Facts as to the Proceedings

30. The respondents' contention that the ***Charter*** was not "raised" at trial is to refer to the technicality that a form regarding the ***Charter*** was apparently not filed properly at trial. As The Court of Appeal agreed upon reviewing the applicant's explicit and on-going reliance on the ***Charter*** throughout the trial and on appeal, the applicant "relied on" the ***Charter***, but in the absence of the form did not "raise" the ***Charter***. (Please see Leave to Appeal p. 10, para 30-35)
31. The respondents each refer to a "29 day trial". In fact, the "trial" was largely the defendants cross-examination of the applicant, and motions and arguments by the respondents in what was supposed to have been the plaintiff-applicant's case (Page 10 of this Reply Book)
32. The respondents refer to a "60 page factum" (Faculty respondents, para 23, page 8). This was a result of the respondents filing two separate factums permitting them a total of 60 pages.
33. Regarding damages, The Court of Appeal permitted the respondents to make an argument for the first time at the Court of Appeal hearing that the applicant had not proven damages. The respondents' brief reference in their factum (please see page 10.1) did not permit the applicant to prepare for the respondents extended lengthy legal argument introducing new case law at the

hearing. The self-represented applicant should have objected to this tactic, but did not in the moment do so. In any event, this is *not* an issue for which the applicant seeks Leave to Appeal.

Ground 3: Repeated Failure To Refer To Material Fact Evidence In The Lower Courts

34. Contrary to the Faculty Respondents' opinion that the Court of Appeal "fully and carefully dealt with each of Ms. Maughan's substantial arguments" (p. 10, Para 28), The Court of Appeal did not give *Reasons,* with the exception of the Duty of Care and parts of the ***Charter*** issues. The Court of Appeal is explicit that they are not going to give *Reasons*, because they largely viewed the applicant's basis' of appeal as "not sufficiently meritorious to warrant a discussion" (Court of Appeal *Reasons* para 69).
35. Likewise, The University Respondent claims that at the Court of Appeal hearing, "Ms. Maughan discussed virtually all of the evidence she adduced at trial" (para 14).
36. These are false and misleading statements by the respondents. The applicant provided the index of her Condensed Book (Leave Book Vol. III, Tab 22) to demonstrate that the Court of Appeal did not give *Reasons* on the primary basis of her appeal, in particular, those basis of appeal found at Para 1 and 2 of her Leave to Appeal.
37. To counter the stated perceptions of the respondents, the applicant has provided the transcripts of her submissions to the Court of Appeal on the (7) issues she placed before it.[7] The issue, as outlined on page 18 and 19 of the Leave to Appeal is that both of the lower Courts' *Reasons for Decision* fail to: "provide public accountability and to permit effective appellate review." (*R. v. R.E.M.*).

ALL OF WHICH is respectfully submitted this 15th day of December, 2010.

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[7] The University respondent had originally requested the (4) day Court of Appeal hearing, but the request was attributed to the applicant at the request of the respondents. The applicant was given (2) days and the respondents were given (2) days.