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Discrimination case pits transgender rights against those of a religious school after teacher fired for changing gender



JEN GERSON | May 11, 2014 | Last Updated: May 12 6:41 PM ET
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Handout

On the matter of whether it was discrimination, there's no real debate.

Substitute teacher Jan Buterman was fired when she became a he over the summer of 2008.

"The reason for removing you from the substitute teacher list follows a conversation we shared last June in which you indicated that you had been diagnosed with a gender identity medical condition," read the termination letter from the Greater St. Albert Catholic School Board in northern Alberta. "In discussions with the Archbishop of the Edmonton Diocese, the teaching of the Catholic Church is that persons cannot change their gender. One's gender is considered what God created us to be."

Fired and with two kids to feed, so began Jan Buterman's six-year court battle — one that continues to this day. Mr. Buterman's was one of the first major legal conflicts pitting transgendered rights against those of a religious organization to practice its preachings. It won't be the last.

“One's gender is considered what God created us to be

Between recent rulings demanding greater ease for transgendered people who wish to change their sex on government identification, to debates over whether public and quasi-public religious schools should be able to enforce strict covenants and morality codes that exclude gay, lesbian and transgendered students and staff, Mr. Buterman's case has provided a worrying precedent for the faithful.

If Mr. Buterman wins his case with the Alberta Human Rights Commission — its hearing date still to be decided — these schools fear they will be forced to accommodate people whose values and behaviour differ markedly from their own in an environment that is explicitly religious.

If he loses, it could prove to be a gut-wrenching setback for those with unconventional gender identities.

“This is one of the oldest human rights issues in Canada,” said Dominique Clement, an assistant professor of human rights law at the University of Alberta. “The right to a religious education goes back well over 200 years in this country.... It's the only right explicitly granted by Confederation — that of the rights of Protestants and Catholics to a religious denominational school.”

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Meanwhile, transgendered people are on the cusp of the same kind of recognition that has been granted to women and gays in recent generations.

“In some provinces, it's against the law to discriminate against people because they're transsexual. In other places, it's perfectly legal.”

So it's not surprising that a situation like Mr. Buterman's would arise, he said.

The conflict began in 2008.

In the early months of that year, Mr. Buterman identified as a woman when she taught a variety of subjects in junior and senior high school, but often wore masculine clothing. She decided to transition to being recognized as a male when school let out that summer; by fall of that year, she came back as a man.

Trying to maintain the letter of the law, he contacted the teachers' union and school boards of both the Catholic and secular districts where he worked to inform them of the change.

The secular board was supportive, but the Catholic district seemed wary, he said.

“They said, ‘Oh well, we'll have to see how to respond to this.’ I thought, well, they just don't know how they'll tell their staff and they want to manage this,” Mr. Buterman said. “Sometimes they need to prepare people yes ... it's not unheard of that they would need to have some discussion and I naively thought that meant they were responding to it.”

After about a week of work, Mr. Buterman got another call: he wouldn't be welcome to return to the rural, religious school board just outside Edmonton.

“It was really devastating and shocking. I remember being so shocked I went ice cold, I literally went purple,” he said. “I remember protesting vehemently, disagreeing with this. This was not OK if I have to go on welfare to feed my children.”

Mr. Buterman demanded a formal termination letter to explain “why a fully qualified teacher who was working every operational day

was suddenly unable to work and unable to feed his children.”

Mr. Buterman is now seeking a Masters in education policy studies at the University of Alberta and has become an outspoken advocate of transgender issues and rights.

After years of back-and-forth with the school board, including some discussion of a settlement, a judge ruled in January that Mr. Buterman’s story would be heard in what could be a precedent-setting case for transgendered people.

“Whether someone is transgendered isn’t a matter of a moral issue, it’s a matter of a health issue for that particular person. It’s a matter of their own personal identity,” said Kelly Ernst, the president of the Rocky Mountain Civil Liberties Association, noting Mr. Buterman’s situation bore striking resemblance to the infamous case of Delwin Vriend, who was fired from a small liberal arts college in 1991 because he was gay — Mr. Vriend appealed the ruling all the way to the Supreme Court and eventually won.



Larry Wong / Postmedia News

“It was really devastating and shocking

“I don’t think schools have any standing to discriminate against people. I think this is what this is about; pure, utter discrimination.”

But the lines are not always so clearly drawn.

In April, the B.C. Law society agreed to accredit faith-based legal school at Trinity Western University in Langley, despite the school’s practice of making students sign a covenant that effectively bars pre-marital sex and homosexuality. That decision has proved contentious across the country; the law societies in Nova Scotia and Ontario has decided not to recognize graduates from the school.

On Tuesday, Trinity Western announced it would challenge both decisions in court.

The university contended that the law societies’ decision projects a message that one cannot be religious and still participate in society — itself a form of discrimination.

Last month it came to light that similar covenants were demanded of students of the Prairie Christian Academy, an evangelical school north of Calgary. Although the school receives provincial funds — and is slated for a taxpayer-supported renovation — teachers are required to “abstain from homosexual relations.”

“In my mind, covenants are becoming code words for trying to go around the charter and give schools and administrators the right to discriminate against others,” Mr. Ernst said. “I think eventually those will be challenged and they’ll start falling.”

Mr. Clement said he did not support the Catholic board’s position in this case: anyone who provides a public service should expect to treat everyone equally. However, he did say he could understand a private or religious school’s hypothetical counter-point.

“There is a very powerful counter-argument; people know what they are getting into when they came to [religious] schools, when

they come to the schools, they choose to adhere to the beliefs,” he said. “Everyone knows what our beliefs are and if they don’t like it, they don’t have to come here.”

Mr. Ernst is less convinced: After the Vriend ruling, the school that had once fired gay teachers has since adapted.

“The world didn’t fall apart. The school embraced and accepted diversity and they’re doing very well.”

Both the St. Albert school board and the Archbishop of Edmonton declined to comment on this story as human rights tribunals are ongoing.

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