

Ross Case Summary

Attis v. New Brunswick No. 15 Board of Education (1996), (sub nom. *Ross v. New Brunswick School District No. 15*) 133 D.L.R. (4th) 1 (S.C.C.).

Malcolm Ross, a teacher in New Brunswick, was terminated from his position in the school board after publicly making racist and discriminatory comments against Jews during his off-duty time over many years. Ross had, over the years, recorded his anti-Semitic views and opinions in four books, pamphlets, letters to a local newspaper, and a local television interview. A Jewish parent whose child attended a different school than where Ross taught filed a complaint with the New Brunswick Human Rights Commission, alleging that the School Board, which employed Ross as a teacher, had violated a section of the *Human Rights Act* by discriminating against him and his children by allowing Ross to continue teaching while having a negative impact in the community.

A review panel felt that Ross's off-duty comments degraded the faith and belief of Jews and further found that the School Board was in fact in breach of the *Human Rights Act*. They concluded that the New Brunswick School Board discriminated against those of Jewish faith by failing to discipline Ross and its almost indifference to the complaints. They also stated that by continuing his employment, it endorsed his out-of-school activities and writings.

The review panel directed the School Board to place Ross on a leave of absence without pay for a period of 18 months and to re-hire him to a non-teaching position, if one became available during the 18 months. The School Board was also told to terminate his employment at the end of that period if he had not been offered and accepted a non-teaching position or if he published or wrote anti-Semitic materials or sold his previous publications any time during the leave of absence or at any time during his employment in a non-teaching position.

Ross appealed the last condition of his employment based on his freedom of speech and the Supreme Court allowed Ross' appeal, holding that the last 2 clauses 2 of the initial order infringed Ross' freedom of expression and freedom of religion and could not be justified under section 1 of the Charter.