SCC File No: 37209

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF ONTARIO)

BETWEEN:

TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT

APPELLANTS
(Appellants)

AND:

LAW SOCIETY OF UPPER CANADA

RESPONDENT
(Respondent)

-and-

ATTORNEY GENERAL OF ONTARIO, ASSOCIATION FOR REFORMED POLITICAL ACTION (ARPA) CANADA, THE CANADIAN CIVIL LIBERTIES ASSOCIATION, THE ADVOCATES' SOCIETY, INTERNATIONAL COALITION OF PROFESSORS OF LAW, NATIONAL COALITION OF CATHOLIC SCHOOL TRUSTEES, LAWYERS' RIGHT WATCH CANADA, CANADIAN BAR ASSOCIATION, CRIMINAL LAWYERS' ASSOCIATION (ONTARIO), CHRISTIAN LEGAL FELLOWSHIP, CANADIAN ASSOCIATION OF UNIVERSITY TEACHERS, START PROUD, OUTLAWS, CANADIAN COUNCIL OF CHRISTIAN CHARITIES, UNITED CHURCH OF CANADA, LAW STUDENTS' SOCIETY OF ONTARIO, CANADIAN CONFERENCE OF CATHOLIC BISHOPS, SEVENTH-DAY ADVENTIST CHURCH IN CANADA, EVANGELICAL FELLOWSHIP OF CANADA, CHRISTIAN HIGHER EDUCATION CANADA, LESBIANS GAYS BISEXUALS and TRANS PEOPLE OF THE UNIVERSITY OF TORONTO, BRITISH COLUMBIA HUMANIST ASSOCIATION, CANADIAN SECULAR ALLIANCE, EGALE CANADA HUMAN RIGHTS TRUST, FAITH, FEALTY & CREED SOCIETY, ROMAN CATHOLIC ARCHDIOCESE OF VANCOUVER, CATHOLIC CIVIL RIGHTS LEAGUE, FAITH AND FREEDOM ALLIANCE and WORLD SIKH ORGANIZATION OF CANADA.

INTERVENERS

[Style of Cause continued on inside cover]

, THE CANADAIAN CONFERENCE OF CATHOLIC BISHOPS
(Pursuant to Rule 45(1) of the *Rules of the Supreme Court of Canada*)

PART I – OVERVIEW

1. The CCCB[1] was founded in 1943 and is the national association of Catholic Bishops in Canada. Its membership includes bishops from the seventy-seven Catholic dioceses and eparchies located across Canada. The individual bishops are responsible for the pastoral care of approximately 13 million Catholics and are assisted in this work by clergy, members of religious orders and lay people in a variety of settings including religious, health care, social service and educational institutions.

2. As the Catholic Church's position on same-sex marriage is similar to that contained in TWU's Community Covenant, any decision made by this Court in relation to the nature and scope of the *Charter* right to religious freedom in an administrative law context where the state actor has a mandate to act in the "*public interest*" will not only have a profound impact on TWU but on Catholic and other faith based religious education as well as Catholic health care and other faith based care facilities across the country. When the CCCB refers to the *Charter* rights[2] of TWU it includes the university's students, faculty and graduates. When the CCCB refers to the Law Society Benchers it means those in Ontario and British Columbia who voted not to accredit.

PART II – POINTS IN ISSUE

3. The issues raised in this appeal that will be argued by this Intervener are:

(a) *This Court's decision in TWU 2001 determines the outcome of these appeals;*
(b) *The Law Societies' refusal to accredit TWU's law school was not only unreasonable based on this Court's decision in TWU 2001, it was also a collateral attack on the "religious or doctrinal" aspect of Catholic schools;*
(c) *At the heart of the Law Societies' decisions lies intolerance of those who believe in the religious institution of marriage as being between one man and one woman;*
(d) *In upholding the LSUC's decision, the Ontario appellate courts have established a hierarchy of rights when considered in an administrative law context where the equality rights of the LGBTQ community, considered in the abstract, will trump the right to religious freedom and so undermine all Charter protections.*

PART III - ARGUMENT

ISSUE ONE: *TWU 2001* determines the outcome of these Appeals.

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[1] In addition to intervening in *Trinity Western University v. British Columbia College of Teachers*, [2001] S.C.J. No. 32 (*TWU* 2001) and *Reference re: Same-Sex Marriage*, [2004] 3 S.C.R. 698, decisions central to the outcome of the within appeal, the CCCB has been active in intervening on its own or with others on important public policy issues before this Court. Those cases are: *Borowski v. The Attorney General of Canada*, [1989] 1 S.C.R. 342; *Rodriguez v. Canada (Attorney General)*,[1993] 3 S.C.R. 519; *Egan v. Canada (Attorney General)*, [1995] 2 S.C.R. 513; *Winnipeg Child and Family Services (Northwest Area) v. G (D.F.)*, [1997] 3 S.C.R. 925; *The Children's Foundation et al v. Bazley*, [1999] 2 S.C.R. 534; *Jacobi et al v. Boys' and Girls' Club of Vernon*, [1999] 2 S.C.R. 570; *Dobson v. Dobson*, [1999] 2 S.C.R. 753; *R. v. Latimer*, [2001] 1 S.C.R. 3; *Harvard College v. Canada (Commissioner of Patents)*, [2002] S.C.J. No. 77; *John Doe v. Bennett*, [2004] 1 S.C.R. 436; *Reference re Assisted Human Reproduction Act*, [2010] 3 S.C.R. 457

[2] The *Charter* rights engaged are those under s. 2(a), 2(b) and 15(1).

(a) TWU 2001

4. In *TWU 2001*[3], this Court considered TWU's Community Standards Agreement which reflected the University's core religious values and which applied to faculty, staff and students on and off the campus which precluded, among other things, sex outside of marriage and homosexual behaviour.[4] That document is now the Community Covenant and stipulates, among other things, that Community members abstain from sexual intimacy which is reserved for marriage between one man and one woman. Provided applicants are prepared to abide by this Covenant they are welcome as a student at TWU.[5]

5. The present appeal and *TWU 2001* have one crucial commonality: both BCCT and the Law Societies, based on their "*public interest*" mandate, withheld the public benefit of accreditation in order to compel TWU into abandoning religious beliefs which these state actors found offensive in order to promote, in the abstract, the equality rights of the LGBTQ community.

6. This Court, in *TWU 2001*, made a number of findings that were binding on the Law Societies and on the Ontario appellate courts in this case:

- neither the *Charter* or the British Columbia *Human Rights Code*[6] apply to this private religious university;
- as a private religious based university it has the right to establish admission policies that favour its own adherents or like-minded individuals;[7]
- focusing on the quality of TWU graduates from a sectarian perspective is in itself discriminatory;[8]
- before the public benefit of accreditation could be denied there would have to be compelling evidence that the public interest would be undermined; and
- a consideration of the equality rights of the LGBTQ community in the abstract would not suffice.[9]

7. The LSUC's argument at para. 128 of its factum that TWU is "*demanding an absolute right*" to force the Society to incorporate TWU's admission policies into its licensing process is, to say the least, kafkaesque as TWU asks nothing more than its legal rights be respected by a body that is legally required to do so. The Law Societies' demand, on the other hand, that TWU

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[3] [2001] S.C.J. No. 32 (hereafter *TWU 2001)*
[4] Ibid., paras. 3, 4.
[5] See *Trinity Western University v. The Law Society of Upper Canada*, 2016 ONCA 518 at paras. 24, 27 (hereafter *TWU ONCA 2016*)
[6] *TWU 2001*, *supra* note 3 at paras. 25, 33, 35; In *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, Justice McIntyre noted at 175-76 that, *"…when Human Rights Acts create exemptions or defences such as bona fide occupational requirement, an exemption for religious and political organizations…these generally have the effect of completely removing the conduct complained of from the reach of the Act."*
[7] *TWU 2001*, *supra* note 3 at paras. 25, 28, 33, 35.
[8] Ibid., paras. 42, 43.
[9] Ibid., para. 35; see also *R. v. Keegstra*, [1990] S.C.J. No. 131 at paras. 244, 248 (hereafter *Keegstra*)

abandon its legal rights in return for accreditation is a gross abuse of their power, which, it is submitted, would warrant this court's condemnation.

(b) TWU 2001 Not Distinguishable

8. The Law Societies' argument that *TWU 2001* can be distinguished on the basis that its decision does not attack the competence of its graduates but rather TWU's discriminatory admission policies is a distinction without a difference as TWU's Community Covenant[10] lies at the heart of both decisions.

9. Both BCCT and the Law Societies unlawfully discriminated against TWU on the basis of its religious belief as openly expressed in that Covenant. This is especially so since the Law Societies admit that TWU's law graduates would pose no risk to the legal profession in their provinces.

10. In *TWU 2001*, BCCT would have required the Teacher College graduates from TWU to be re-educated in Canadian, secular *Charter* values by spending a year at Simon Fraser University. Here the Law Societies go much further by attempting through their decisions to stamp out or silence the open expression of the religious beliefs that were also at the core of BCCT's re-education requirement and thus their discriminatory decisions have a much more egregious character to them.

11. Contrary to the Law Societies' claim[11], they have no greater ownership to the values of equality and diversity than BCCT which also render these appeals indistinguishable from *TWU 2001*.

(c) Failure to Accredit Breaches LSUC's Duty to Advance the Rule of Law

12. Whatever the limits on the LSUC's "*duty to protect the public interest*",[12] it had no jurisdiction to rule on whether the existence of denominational colleges or universities are contrary to the public interest. In particular, it had no jurisdiction or right to determine whether the admission policies of TWU, based as they were on Christian doctrine, are contrary to the public interest as the British Columbia legislature had already spoken on this issue by acting to incorporate and accredit this Christian university.[13]

13. On the other hand the LSUC had a duty to "*maintain and advance the cause of justice and the rule of law*".[14] It failed in this duty to TWU by,

- after posing an open ended question as to accreditation, it failed to devise and

[10] The Covenant exhorts its students to have concern for the well being of others; to act with honesty, civility, truthfulness, generosity and integrity; and to treat all persons with dignity and respect.
[11] See for example LSBC's Factum at paras. 97, 98, 101-108 and see LSUC's factum at paras. 37, 44-52, 129.
[12] Section 4.2(3), *Law Society Act*, R.S.O. 1990, c.L.8.
[13] S.3(2), *Trinity Junior College Act*, S.B.C., 1969 c.44
[14] S.4.2(1), *Law Society Act*, *supra* note 12

implement an objective and dispassionate process that would have been consistent with the principles of natural justice including a clear delineation of the issue that concerned the LSUC, a clear statement as to how TWU was expected to deal with the issue, a fair and impartial hearing on the issue, and delivery of written reasons which were imperative given the important public policy issues involved;

- failing to follow and apply this Court's decision in *TWU 2001*;
- failing to follow and apply this Court's decision in *Same-Sex Marriage Reference*[15];
- discriminating against graduates of TWU's proposed law school on the basis of their religious affiliation contrary to s. 1 and s. 6 of the Ontario *Human Rights Code*;
- rejecting the Federation of Law Societies of Canada Approval Committee's recommendation that TWU be accredited as there was no public interest that would justify a refusal;
- ignoring the protection afforded to religious communities under the preamble[16] and s. 3.1 of the *Civil Marriage Act*, SC 2005, c.33;
- effectively placing the onus on TWU to justify its otherwise lawful admission policies with respect to the equality rights of the LGBTQ community when considered in the abstract; and
- ignoring the onus on it to demonstrate through compelling evidence that its discriminatory decision not to accredit this out of province law school was justified on the basis of an overriding public or state interest – simply a desire to assist a disadvantaged group will not suffice to establish the necessary rational connection between its decision and its objective.[17]

ISSUE TWO: The Law Societies' Decisions are a collateral attack on the "religious or doctrinal" aspect of Catholic schools.

(a) Distinctive Nature of Catholic Schools

14. Catholic schools, commonly referred to as separate schools, and religious institutions are an integral part of Canada's unique cultural heritage and are elemental to this country's social fabric. In some parts of the country, the Catholic school's distinctive place in public life has been guaranteed through a constitutionally entrenched right to public funding which right is immune from *Charter* challenge.[18]

15. The distinctive nature of Catholic schools was accurately described by McIntyre, J. in *Caldwell* when at 624-25, he said,

> *The Board found that the Catholic school differed from the public school. This difference does not consist in the mere addition of religious training to the academic curriculum. The religious or doctrinal aspect of the school lies at its very heart and colours all its activities and programs. The role of the teacher in this respect is*

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[15] *Same-Sex Marriage Reference*, [2004] 3 S.C.R. 698 (hereafter *Same-Sex Marriage Reference)*

[16] The preamble states, "*Whereas it is not against the public interest to hold and publicly express diverse views on marriage;"*

[17] *Keegstra*, *supra* note 9, at para. 300; the BC Benchers' tortuous process that lead to denial is set out at paras. 50-65 of its Factum.

[18] *Reference re Bill 30, An Act to Amend the Education Act (Ontario)* [1987] 1 S.C.R. 1148 at pages 1197-98; *Adler v. Ontario* [1996] 3 S.C.R. 609 at pages 639, 643, 646

> *fundamental to the whole effort of the school, as much in its spiritual nature as in the academic. It is my opinion that objectively viewed, having in mind the special nature and objectives of the school, the requirement of religious conformance including the acceptance and observance of the Church's rules regarding marriage is reasonably necessary to assure the achievement of the objects of the school*.[19]

16. Similarly, Weiler, J.A. for the Ontario Court of Appeal found in *Daly* at 362,

> *…the aim of Catholic education is not merely the transmission of knowledge and development of skills, but rather the integral formation of the whole person according to a vision of life that is revealed in the Catholic tradition. Religious faith on the part of the teachers is a valid consideration if the aim of the school to create a community of believers with a distinct sense of the Catholic culture is to be achieved*.[20]

(b) <u>Loyola High School and Religious Freedom</u>

17. Justice Abella for this Court made it clear in *Loyola High School v. Quebec (Attorney General)*, a case that dealt with a private Catholic high school in Quebec, that an administrative decision preventing the school from teaching and discussing Catholicism from its own perspective in any part of a provincially mandated program was a serious interference with the values underlying the *Charter* right to religious freedom.[21]

18. She found a state actor like the Law Societies cannot employ measures that undermine the character of lawful religious institutions and disrupt the validity of religious communities as this would represent a profound interference with religious freedom.[22] Nor can they coerce a lawful religious institution such as TWU to abandon its religious beliefs by withholding a public benefit in order to promote the interests of another group unless those beliefs conflict with or harm an overriding state or public interest.[23]

19. If the state actor can demonstrate an overriding state or public interest then there must follow a proportionate balancing that gives effect as fully as possible to religious freedoms when measured against the public interest involved. The porportionality analysis is a robust one and "*works with the same justificatory muscles*" as the *Oakes* test.[24] Neither Law Society met this test.

20. Chief Justice McLachlin and Justice Moldaver (with Justice Rothstein concurring), would

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[19] *Caldwell v. St. Thomas Acquinas High School* [1984] 2 S.C.R. 603 at pages 624-625.
[20] *Daly v. Ontario* (1999) 44 O.R. (3d) 349 at p. 362 (Ont. C.A.), application for leave to appeal to the Supreme Court of Canada dismissed 31 October, 1999
[21] *Loyola High School v. Quebec (Attorney General)* 2015 SCC 12, at para. 80 (hereafter *Loyola*)
[22] Ibid., para. 67
[23] Ibid., paras. 43, 63
[24] Ibid., para. 40

have extended the s.2(a) *Charter* rights to Loyola itself.[25] Regardless of the analytical approach taken the onus, they found, is on the state actor to demonstrate the Charter right was limited no more than reasonably necessary under s. 1 of the *Charter* – if it fails to do so the decision is unconstitutional and must be set aside.[26] Neither Law Society met this test.

21. The Law Societies' denial of accreditation based on TWU's moral views as expressed in the Community Covenant were also a serious attack on the "*religious or doctrinal*" aspect of Catholic schools which McIntyre, J., as noted above, found was at the heart of the Catholic school system and coloured all their activities and programs and indeed is an attack on all faith based education.

22. Given this Court's findings in *TWU 2001* as set out above, there can be no public or state interest that would justify the Law Societies' breach of TWU's *Charter* rights and thus there was nothing to balance. Consequently, their decisions were unreasonable.

(c) <u>The Law Societies Breach their Duty of Neutrality</u>

23. Given the absence of an overriding state or public interest, the Law Society Benchers did not have the power, while acting in their official capacities, to require TWU to comply with their personal beliefs or opinions on same-sex marriage or the morality of homosexual sexual conduct no matter how sincerely or strongly those beliefs or opinions might be held.[27] By basing their decisions on the Benchers' personal beliefs and opinions these Law Societies breached their duty of neutrality with respect to TWU's right to religious freedom.[28]

24. In addition, and contrary to the Ontario Court of Appeal's basic premise, there was no collision of *Charter* rights involved in this case. The only rights implicated by the Law Societies' decisions were those of TWU.[29] The equality rights of the LGBTQ community hung in the air and were driven by the ideological beliefs and opinions of the Benchers with respect to the religious beliefs embodied in TWU's Community Covenant in order to deny accreditation to this lawful University's proposed law school.

ISSUE THREE: At the heart of the Law Societies' decisions lies intolerance of those who believe in the religious institution of marriage as being between one man and one woman.

(a) <u>Discrimination Against Those Who Believe in Religious Marriage</u>

25. In the *Same-Sex Marriage Reference* this Court in a *per curiam* decision, made an

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[25] *Loyola*, *supra* note 21, para. 91; Abella, J. at para. 33 found it was not necessary to decide this issue for the purpose of her majority decision.
[26] Ibid., paras. 113, 114, 146, 163
[27] *Mouvement Laique Quebecois v. Saguenay (City)* [2015] 2 SCR 3 at para. 119
[28] Ibid., para. 74
[29] Section 32 of the *Charter*

important distinction between civil marriage as a legal institution and marriage as a religious institution.[30] This distinction was either lost on the Law Societies in making their decisions or ignored.

26. In that *Reference* religious interveners were concerned that the *Civil Marriage Act* would establish a particular ideological opinion as a universal and binding norm which holds that intimate sexual relations at the core of same-sex unions must be treated as a good. This norm they argued would lead to the position that all those who believe and publicly espouse the view that homosexual sexual conduct is immoral based on their religious beliefs are bigots.

27. This Court was alive to this issue by emphasizing that the s.2(a) *Charter* right to religious freedom is expansive and encompasses the right to believe and entertain the religious beliefs of one's choice, the right to declare one's religious beliefs openly and the right to manifest religious beliefs by working, teaching, disseminating and religious practice.[31]

28. Given its recognition of marriage as a religious institution, the Court also held that state compulsion of religious officials to perform same-sex marriage contrary to their religious beliefs would offend s. 2(a) of the *Charter* and would almost to a certainty not be saved by s.1.[32] The Court also noted that human rights codes must be interpreted and applied in a manner that respects the broad protection granted to religious freedom in the *Charter*.[33]

29. This concern also found expression in both the majority and minority opinions of the United States Supreme Court in *Obergefell v. Hodges* which found same-sex marriage in that country was a constitutional imperative. For the majority Justice Kennedy said,

> *Finally, it must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered.* [34]

(b) <u>Denying Public Benefit to Those Who Believe in Religious Marriages</u>

30. The Ontario Court of Appeal in this case, citing *Bob Jones University v. United States*[35] held that accreditation by LSUC was a public benefit that could be denied TWU because of its alleged discriminatory admission policies with respect to the LGBTQ community.

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[30] *Same-Sex Marriage Reference*, *supra* note 15 at paras. 42, 55
[31] Ibid., paras. 50, 57
[32] Ibid., paras. 58, 60
[33] Ibid., para. 55
[34] 2015 U.S. Lexis 4250 Justice Kennedy's decision at pp. 31-32; for the minority, see Justice Roberts decision at pp. 53-54; Justice Scalia's decision at pp. 58-59; Justice Thomas' decision at pp. 68-69; and Justice Alito at p. 74.
[35] 461 U.S 574; *TWU ONCA 2016*, *supra* note 5 at para. 138

31. Withholding a public benefit to this private lawful Christian university in order to condemn its religious beliefs while attempting to promote the rights of others in the abstract is no different in substance than forcing a religious official to perform a same-sex marriage contrary to their religious beliefs. As this Court found in *Same-Sex Marriage Reference* such compulsion would be contrary to s. 2(a) of the *Charter* and would not be saved under s. 1.

32. The Law Societies' decisions also undermine the protection afforded TWU by s. 3.1 of the *Civil Marriage Act*, SC 2005, c. 33 which by analogy would apply to its decision and which provides,

> *For greater certainty, no person or organization shall be deprived of any benefit,…by 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.*

(c) The Law Societies Breach Their Public Interest Mandate

33. The Law Societies' "*duty to protect the public interest*" does not extend to approving or disapproving of religiously based moral beliefs especially when those beliefs have *Charter* protection and are original freedoms.[36] This public interest mandate was meant to ensure the core values of the profession – competence, integrity and independence.[37]

34. A Law Society, on the other hand, cannot enact rules which unreasonably undermine public confidence in lawyers.[38] By implicitly and peremptorily stigmatizing TWU's graduates of its proposed law school as intolerant of the LGBTQ community the LSUC's decision will serve to undermine the public's confidence in those graduates – thus their discriminatory decisions are also contrary to their public interest mandate.

ISSUE FOUR: Ontario Court of Appeal's Decision Creates Hierarchy of Rights

(a) Court of Appeal for Ontario

35. After incorrectly framing the issue as a "collision" of *Charter* rights[39] the Court of Appeal found the LSUC's decision was "clearly" reasonable even though the decision breached TWU's s. 2(a) *Charter* rights[40]. Its jurisdiction to refuse accreditation arose from its broad mandate to act in the "public interest" when that objective was balanced against TWU's s. 2(a) *Charter* rights.[41] The court found the Community Covenant reflected its belief in the religious institution of marriage hurtful and discriminatory to the LGBTQ community while breaching

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[36] *Saumur v. City of Quebec*, [1953] 2 S.C.R. 299 at p. 329
[37] *Green v. Law Society of Manitoba*, 2017 SCC 20 at para. 79
[38] Ibid., para. 81.
[39] See para. 24 *supra*
[40] *TWU ONCA 2016*, *supra* note 5 at paras. 12, 101, 129
[41] Ibid., paras. 69, 79

that community's equality rights not to mention s. 6 of the Ontario *Human Rights Code*.[42]

36. Accreditation, the court found, was a public benefit that could be denied to this private lawful Christian university because of the impact of its religious beliefs with respect to marriage on the LGBTQ community.[43] The court paid scant attention to *TWU 2001*on the basis that *Doré* had changed the analytical approach with respect to administrative decisions that impact *Charter* rights.[44]

37. While the LSUC's decision effectively precluded TWU law graduates from the practice of law in Ontario based on their religious affiliation to the proposed law school, the court found no contradiction or irony in stating:

> *It follows that one of the LSUC's statutory objectives is to ensure the quality of those who practice law in Ontario. Quality is based on merit and merit excludes discriminatory classifications*.[45]

(b) <u>The Court of Appeal erred</u>

38. The Court of Appeal's analysis, with respect, reflects a very impoverished view of religious freedom that is out of step with the expansive nature of that freedom as articulated by this Court in *Loyola*, the *Same-Sex Marriage Reference* and many other cases. Its decision effectively placed the onus on TWU not the state actor to demonstrate that its admission policy was a reasonable limit on the equality rights considered in the abstract of those in LGBTQ communities who might want to apply to its law school. There was no obligation on TWU to do so as this Court in *TWU 2001,* had decided that issue – as a lawful private religious based university it has the right to establish admission policies that favour its own adherents or like-minded individuals, a finding that was binding on the LSUC and the Court of Appeal.

39. Even though this Court in the *Same-Sex Marriage Reference* directed courts that human rights codes *must* be interpreted and applied in a manner that respects the broad protection granted to religious freedom in the *Charter,* the opposite was done by the LSUC and the Court of Appeal in this case by creatively, but incorrectly, interpreting the Ontario *Code* so as to deprive TWU of its *Charter* protections and its exemption under the *Human Rights Code* in its home province while implicity condoning the LSUC's breach of s.1 and s.6 of that Code with respect to the *Charter* rights of TWU graduates.[46]

40. The LSUC suggests that when the equality rights of the LGBTQ community are in

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[42] *TWU ONCA 2016*, *supra* note 5, paras. 115, 119
[43] Ibid., para. 138
[44] Ibid., paras. 64-70
[45] Ibid., para. 109
[46] Formerly s.19 of the *Human Rights Act*, S.B.C. 1984, c.22 and s. 41 of the *Human Rights Code* R.S.B.C. 1996, c. 210

conflict with the right to religious freedom, the right to religious freedom will necessarily be diminished.[47] This reasoning leads to a "hierarchy of rights" a concept repeatedly rejected by this Court as it would undermine all *Charter* protections.[48]

41. This issue becomes critical in an the administrative law context when the standard of review is reasonableness. By applying a diminished view of the right to religious freedom versus a robust view of the equality rights of the LGBTQ community even in the abstract the Court of Appeal found the LSUC's decision fell within the bounds of reasonableness thereby creating a hierarchy of rights where the *Charter* right to religious freedom becomes a "secondary" right. At no time did the Court engage in a "*porportionate balancing*" of rights as required by *Loyola*.

(c) The British Columbia Court of Appeal properly considered TWU's Charter rights with Respect to the Religious Institution of Marriage.

42. Quoting Justice Abella from this Court's decision in *Loyola* the Court of Appeal found the Society's decision to deny accreditation was a clear breach of TWU's *Charter* rights.[49] The appeal court agreed with Chief Justice Hinkson that the Society's denial would have no impact on the LGBTQ community,[50] while the "*public benefit*" argument was dangerous as it would put the licensing or accreditation of all religious facilities in jeopardy.[51]

43. The Court found the Benchers' decision discriminatory, noting,

> *This case demonstrates that a well-intentioned majority acting in the name of tolerance and liberalism, can, if unchecked, impose its views on the minority in a manner that is in itself intolerant and illiberal.*[52]

PART IV – SUBMISSIONS CONCERNING COSTS

44. This Intervenor does not seek costs.

PART V – CONCLUSION

45. In their efforts to stamp out TWU's belief in the religious institution of marriage the Law Societies have acted in a discriminatory manner while seriously breaching TWU's *Charter* rights and thus they have acted contrary to the public interest they seek to uphold.

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[47] See para. 107 of its Factum
[48] See for example Justice Gonthier's comments at para. 150 in *Chamberlain v. Surrey School District No. 36*, [2002] S.C.J. No. 87.
[49] *Trinity Western University and Brayden Volkenant v. The Law Society of British Columbia*, 2016 BCCA 423 at paras. 122, 127, 128, 129, 131, 167-169.
[50] Ibid., paras. 174, 175
[51] Ibid., para. 184; The Court noted, *"In a diverse and pluralistic society, this argument must be treated with considerable caution. If regulatory approval is to be denied based on the state's fear of being seen to endorse the beliefs of the institution or individual seeking a license, permit or accreditation, no religious faculty of any kind could be approved. Licensing of religious care facilities and hospitals would also fall into question."*
[52] Ibid., para. 193

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS DAY OF 2017.

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WILLIAM J. SAMMON /AMANDA M. ESTABROOKS
Counsel for The Canadian Conference of Catholic Bishops