SCC Court 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

- and -

LAW SOCIETY OF UPPER CANADA

Respondent

- and -

ATTORNEY GENERAL FOR ONTARIO

Intervener

SCC Court File No. 37318

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

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

Appellant

- and -

TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT

Respondents

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Part 1: OVERVIEW AND STATEMENT OF FACTS

> The very essence of our Canadian society is determined by the diversity which is permitted to flourish.[1]

1. The Interveners the Roman Catholic Archdiocese of Vancouver, the Catholic Civil Rights League and the Faith and Freedom Alliance support the proposition that Canada's democratic and constitutional tradition promotes pluralistic liberalism, where disagreements and different beliefs, and conduct which promulgates those beliefs, are encouraged and promoted, even in the public sphere. The law acknowledges such freedoms and encourages respect for a diversity of views; it guarantees the right to hold beliefs and follow practices that diverge from the norm.[2]

2. The principles of an authentic pluralism, secularism and neutrality do not require that religious belief, beliefs about religion, or conduct be absent from the public sphere; nor does secularism relegate religious beliefs solely to private expressions of creedal affirmation or worship, either in the individual or community context.

3. A secular state, therefore, respects religious differences, rather than seeks to extinguish them, with a recognition that Canada is not a non-religious society. Religious groups and their members play an important role in the public sphere where societal debates take place.

4. The Law Society of British Columbia and the Law Society of Upper Canada (the "Law Societies") were required to seek ways to respect and give effect to the religious beliefs and views of Trinity Western University ("TWU") and its members, and the Community Covenant. The Law Societies instead engaged in preferring one set of beliefs over another, with two potential consequences. First, there is an increased potential for political decision-making and state involvement in internal religious decision-making. Second, there is a danger of removal of religious beliefs from the public sphere and relegation of religious freedom to private worship. Both consequences undermine the values of pluralism and secularism, and undermine our democratic society.

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[1] *Gould v. Yukon Order of Pioneers*, [1996] 1 S.C.R. 571, para. 76

[2] The Right Honourable Beverley McLachlin, P.C., "Reconciling Unity and Diversity in the Modern Era: Tolerance and Intolerance, Global Centre for Pluralism, Annual Pluralism Lecture 2015, May 28, 2015 ("McLachlin, Reconciling Unity"), at p.14

5. These interveners make no statement regarding the facts.

Part 2: ISSUES ON APPEAL

6. These interveners seek to build on the decisions of this court[3] in which it has engaged the principles of pluralism and state neutrality with respect to the freedom of *religion* guaranteed by the *Canadian Charter of Rights and Freedoms* ("*Charter*").[4]

Part 3: ARGUMENT

7. The Roman Catholic Archdiocese of Vancouver ("RCAV") has been serving Catholics in British Columbia since 1863, with pastoral responsibility for 430,000 baptized Catholics. As a metropolitan see, the RCAV has four suffragan Dioceses: Kamloops, Nelson, Prince George, and Victoria, each of which is led by its own bishop. Within the boundaries of the RCAV are seventy-six parishes, twelve missions, fifty Catholic schools, four hospitals, four other residential care facilities,fourinstitutions of higher learning, and more than eighty organizations, associations, ministries and clubs that help carry out the Church's mission. The RCAV has deep and significant roots in British Columbia.

8. The Catholic Civil Rights Leagueadvocatesfor law and policy that supports the presence of Christian beliefs in the public sphere and a rich conception of multiculturalism and religious tolerance. The Faith and Freedom Allianceseeks to promote a Gospel-inspired conception of freedom of religion, conscience and expression, under constitutional and human rights legislation across the country.

9. These interveners support a robust conception of the freedoms of religion, conscience and expression.While supportive of TWU and Brayden Volkenaut, and the decision of the British Columbia Court of Appeal, these interveners submit that Canada's democratic and constitutional history promotes pluralistic liberalism, where disagreements and different beliefs amongst Canadians encourage social peace, mutual respect and diversity.

10. The interveners submit:

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[3] *Loyola High School v. Attorney General of Quebec*, 2015 SCC 12 and *Mouvementlaïquequébécois v. Saguenay*, 2015 SCC 16

[4] *Canadian Charter of Rights and Freedoms*, Part I of *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c. 11*

(a) The law encourages respect for a diversity of views.Authentic pluralism allows for religion to share space with competing views in the public sphere.

(b) The state decision-maker's role is an essentially neutral intermediary, neither favouring nor hindering any particular religious belief or belief about religion.

(c) Freedom of religion protects collective and group rights. Religious corporations, including educational and health-care institutions, further a religious way of life that should not be infringed without demonstrable justification.

(d) A narrow view of secularism and the scope of religious freedom threatens opportunities for the participation of religious institutions in public life, and threatens our pluralistic society.

(e) A contextual, proportional, coherent and flexible approach must be taken to avoid true conflict between claims for equality rights and society's interest in promoting meaningful religious pluralism.

A. In Canada, freedom of religion is grounded in authentic pluralism.

11. A defining characteristic of Canada's national character is its "evolutionary tolerance for diversity and pluralism", which recognizes that "ethnic, religious and cultural differences" will be "acknowledged and respected".[5] The value of pluralism is not expressed explicitly in the Charter, but developed through jurisprudence. Authentic pluralism is a foundational principle which underpins our democratic society.

12. The history of religious freedom in Canada is unique.[6]In 1867, the British North America Act secured religious freedoms for the Catholic and Protestant minorities in their respective provinces by providing a constitutional guarantee for minority religious schools.[7]Most recently the *Charter* has entrenched Canada's religious traditions through its preamble and requirement that substantive rights be interpreted in a manner consistent

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[5] *Bruker v. Marcovitz*, 2007 SCC 54, [2007] 3 SCR 607, paras. 1-2
[6] Rt Hon Beverly McLachlin, PC, "Freedom of Religion and the Rule of Law: A Canadian Perspective" in Douglas Farrow, ed., *Recognizing Religion in a Secular Society: Essays in Pluralism, Religion and Public Policy* (Montreal: McGill-Queen's University Press, 2004) 12 at pp.16-21
[7] *Ibid.*, p.18

with Canada's "multicultural heritage", which includes religious cultures.[8]

13. Unlike the requirement for a strict separation between church and state under the United States of America's establishment clause[9], the constitution of Canada allows, if not encourages, state support of religious institutions. Canada and the U.S., consequently, have differing historical, constitutional traditions: one guarding against the dominance of a religion or religion generally; the other guaranteeing religious minority rights within the historical context of an established religion.

14. Religion in Canada prospers within this context and conception of pluralism and liberalism, wherein society values the building of strong communities and not solely the pursuit of maximizing personal autonomy.[10]

15. These interveners submit that TWU's rights to freedom of religion were engaged and should be protected: *SyndicatNorthcrest v. Amselem.*[11]

B. A secular state respects religious differences and differences about religion.

16. Authentic pluralism does not presume that one right will necessarily trump another.[12] This court has repeatedly rejected the attempt to give certain rights a "superior status".[13] Instead, courts and tribunals should focus on how the space between competing rights and groups can be shared rather than granting dominance to one viewpoint over another. Implicit in this court's decisions on competing rights is that prioritizing one right over another "is not good for policy or democracy".[14]

17. In applying state neutrality, the state affirms and recognizes the religious freedom of individuals and their communities.[15]This court, in *Loyola*,stated the following regarding secularism and pluralism:

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[8]*Charter*, *supra.*, ss. 2(a), 2(b), 2(d) and 15
[9]Peter W. Hogg, Constitutional Law of Canada, loose-leaf, 5th ed. (Toronto: Carswell, 2007) ch. 42, at para. 42.2
[10]Benson, Iain T., "Living Together with Disagreement: Pluralism, the Secular and the Fair Treatment of Beliefs in Canada Today" (Revised and updated presentation delivered at the Ronning Centre forums at the Faith and Life Chapel, University of Alberta, 17 February 2007, and Christ Church Calgary, Alberta, 18 February 2007) (Edmonton: McCallum Printing Group Inc, 2010), at pp 3-4
[11]*SyndicatNorthcrest v. Amselem*, 2004 SCC 47
[12]*Bruker*, *supra.*, at paras. 30-33
[13]*Gosselin (Tutor of) v. Quebec (AG)*, 2005 SCC 15 at para. 26
[14]Benson,*supra.*, pp 30-31, citing Charles Taylor, "The Public Sphere", in his Philosophical Arguments (Cambridge, MA: Harvard University Press, 1995) 257, at p.281
[15]*Loyola*, *supra.*, at para. 44

(a) "Because it allows communities with different values and practices to peacefully co-exist, a secular state also supports pluralism."[16]

(b) "A pluralist, multicultural democracy depends on the capacity of its citizens to engage in thoughtful and inclusive forms of deliberation amidst, and enriched by, different religious worldviews and practices: Benjamin L. Berger, 'Religious Diversity, Education, and the 'Crisis' in State Neutrality' (2014), 29 *C.J.L.S.* 103, at p. 115." [17]

18. These interveners submit that nowhere does the decision in *Loyola* eliminate religious beliefs, expressions and manifestations from the public sphere, or relegate the right of freedom of religion to private thought, worship or creedal affirmation. Likewise, nowhere in the decision does a consideration of religious freedom permit interference in the content of a religion. Neutrality allows religious groups and their members to play an important role in the public sphere where societal debates take place.

19. The Law Societies, as state decision-makers, should remain as an essentially neutral intermediary, and must seek ways to respect and give effect to the beliefs of TWU and its students, and their Community Covenant.[18] As Lebel J. explained:

> As a general rule, the state refrains from acting in matters pertaining to religion. It is limited to setting up a social and legal framework in which beliefs are respected and members of the various denominations are able to associate freely in order to exercise their freedom to worship, which is a fundamental, collective aspect of freedom of religion, and to organize their churches or communities.[19]

20. Such an exercise must be disciplined:[20] "learning to live with people we may not particularly like … will require concerted, deliberate efforts to build social institutions and cultural habits which take account of difference, which see diversity as an opportunity rather than as a burden".[21]

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[16] *Loyola*, *supra.*, at para. 45
[17] *Loyola*, *supra.*, at para. 48
[18] Iain T Benson and Barry W. Bussey, Foreword in "Religion, Liberty and the Jurisdictional Limits of Law", (Lexis Nexus Canada, 2017), at pp.xxv, xxvi
[19] *Congregation des temoins de Jehovah de St-Jérome-Lafontaine v. Lafontaine (Village)*, 2004 SCC 48 at para. 6, [2004] 2 SCR 650
[20] *Trinity Western University v. The Law Society of British Columbia*, 2016 BCCA 423 *("TWU BC")*, at para. 106
[21] McLachlin, P.C., "Reconciling Unity", at pp.13-14

C. Freedom of religion protects collective and group rights.

21. Freedom of religion has "both individual and collective aspects".[22]Though religion is about religious beliefs, it is also about (i) a way of life that is viewed as living one's faith; (ii) the relationships between individuals that have a common faith ("religio" to bind), and (iii) relationships between those with a common faith and the rest of society.

22. In *Loyola*, this courtrecognized that "individuals may sometimes require a legal entity in order to give effect to the constitutionally protected communal aspects of their religious beliefs and practice, such as the transmission of their faith".[23]In modern Canada, religious groups manifest and transmit their religious beliefs by forming churches or temples, schools and educational institutions, hospitals and care facilities, and charities and other outreach services. The autonomous existence of such religious communitiesfurthers pluralism in a democracy.[24]These practices accord with the "essence" of religious freedom.

23. These interveners support the position that TWU, its staff, students and stakeholders, and as an institution, enjoy and have the benefit of freedom of conscience and religion under section 2(a) of the *Charter*.[25]

D. Secularism does not insist on the absence of religion from public life.

24. TheLaw Societies, as state actors, must comply with the *Charter*, so as to allow freedom of conscience, freedom of religion, freedom of thought, freedom of belief and freedom of expression.

25. The context of state regulation of religious educational institutions poses the question of how to balance robust protection for the values of the underlying religious freedom with the values of a secular state, with the recognition that the balancing is not of two opposites.[26] Secularism includes respect for religious differences;[27] it does not equal an absence of religion. Religious people are not required to "park" their religious

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[22] *Alberta v. Hutterian Brethren of Wilson Colony*, [2009] 2 S.C.R. 567, at para. 31; *R.v. Edwards Books and Art Limited*, [1986] 2 SCR 713 at pp.759, 781
[23] *Loyola*, *supra.*, at para. 33
[24] *Hutterian Brethren*, *supra.*, paras. 130, 131, 182
[25] *Loyola*, *supra.*, at para. 34
[26] Benson and Bussey, *supra.*, at p.xxxi
[27] *Loyola*, *supra.*, para. 43

convictions before entering the public sphere.

26. In stark contrast, the Ontario Court of Appeal and the Law Societies' position promotes a form of radical liberalism that views certain rights as "trump":[28]"civic totalism" or "convergance" liberalism, rather than a "modus vivendi" liberalism.[29]Such a radical, monolithic form of liberalism is foreign to the values and tradition on which Canada prides itself.[30] The Law Societies' position distorts "liberal principles in an illiberal fashion, leading to only a "feeble notion of pluralism".[31]

27. The Law Societieshave employed a view of secularism that requires an absence of religion from the public square. They also advance a narrow construction of the freedom of religion, relegating the freedom to private worship and creedal affirmation.[32] Bydoing so, the Law Societies threaten opportunities for the participation of religious institutions in public life, and their contributions thereto. They undermine pluralism.

28. The Law Societies also viewed a consideration of religious freedom as permitting an external valuing of religious beliefs and practices.[33]In construing the freedom of religion so narrowly, the Law Societies also end up engaging in regulating the internal conduct of a religious group, a role which this court has discouraged and deterred.[34]

E. The state should exercise tolerance and make room for competing rights.

29. Canadians confront challenges which may arise from the diversity of its many cultures, languages, religions, beliefs, and identities sometimes by a process of reconciling competing rights. Reconciliation, in this context, means to find a way to give "full force and effect" to each right within the relevant context.[35] Diversity is not homogeneity.[36]

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[28] *Chamberlain v Surrey School District No 36*, 2002 SCC 86; *Trinity Western University v. The Law Society of Upper Canada, 2016 ONCA 518* ("*TWU ON*"), at paras. 115-119; LSBC Factum, at para. 9

[29] William Galston, "Religion and the Limits of Liberal Democracy" (in Douglas Farrow, ed., *Recognizing Religion in a Secular Society: Essays in Pluralism, Religion, and Public Policy* (McGill-Queen's University Press, 2004), at pp.46-7; John Gray, "Two Faces of Liberalism" (New York: The New Press, 2000) at pp.20-1

[30] *Bruker*, *supra.*, at para.1

[31] *Chamberlain*, *supra.*, at para.137

[32] LSBC Factum, at paras. 11, 21, 22, 146, 154, 159-60, 170, 171, 189, 214, 219; LSUC Factum, at paras. 2, 54, 77, 91, 120, 121

[33] *TWU BC*,*supra.*, at paras. 183; LSBC Factum, at paras. 21, 22, 196

[34] *SyndicatNorthcrest*, *supra.*, at para. 50

[35] *R.v. N.S.*, 2010 ONCA 670 at para. 147; affd by 2012 SCC 72, [2012] 2 SCR 726

[36] Benson and Bussey, *supra.*, at p.xxxi

30. This process of reconciliation is a fundamental aspect of our democratic and constitutional tradition, promoting authentic pluralism. An authentic, pluralistic liberalism means employing a "complex, nuanced, fact-specific exercise"[37]of balancing rights that circumscribes competing rights to their proper spheres.[38]

31. These intervenersagree that there is no conflict of rights in this case. TWU is not a state or government body, but a privately funded faith community, in a privately funded university.TWU has no duty to remain neutral in its decision-making process, including its admission process.These interveners submit that there is no unlawful discrimination to the LGBTQ community in approving TWU as a law school.

32. To the extent that a conflict is accepted, however, the Law Societies were to work towards a reconciliation of rights to advance the goals of a truly authentic, pluralistic Canadian society.These interveners support the following four overarching principles:

(a) Context: rights should be viewed in their context and their limits defined within such boundaries.

(b) Proportionality: limits on rights must weigh the deleterious and salutary aspects of the effects and the measures.

(c) Coherence: courts should avoid a conflict between apparently clashing rights by properly determining the scope of the rights.

(d) Flexibility: the analysis must be flexible and capable of addressing broader social purposes *Charter* or legislated rights.[39]

33. The court, in *R. v. N.S.*,established a framework for analyzing competing rights questions.That framework seeks, first, a way to accommodate both rights and avoid a conflict between them. Second, if no accommodation is possible, a weighing of the salutary effects and the deleterious effects of the infringement.[40]The essential component

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[37]*Bruker*, *supra.*, at para.2
[38]Benson, *supra.*, at p.5
[39]Iacobucci, Hon Justice Frank, "Reconciling Rights: The Supreme Court of Canada's Approach to Competing Charter Rights" (2003) SCLR (2d) 137 at pp.155-161
[40]N.S., *supra.*, at p.9; Newman, Dwight G., "On the Trinity Western University Controversy: An Argument for a Christian Law School in Canada" (June 22, 2103) at p. 5 (2013) 22:3 Const. Forum 1-14, revised version of

of the approach is to identify the potential competing rights and then attempt to reconcile them so as to give them both full force and effect.

F. Authentic pluralism in action.

34. The *Civil Marriage Act* (the "*CMA*")[41] is an example of the attention to pluralism in government decision-making.[42]The *CMA* was the result of the "dialogue"[43] between the courts and Parliament, which dialogue has the effect of enhancing the democratic process.[44] In its preamble, the *CMA* explicitly recognizes both the equality rights of those who wish to enter same sex marriage and the rights of individuals to hold a view of marriage in agreement with their religious beliefs.[45]The *CMA* explicitly recognizes the right of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs,[46]even where the religious official is performing the public function of officiating a civil marriage in addition to a religious marriage; and provides a broad protection to all persons and organizations in respect of conscientious and religious claims.[47]

35. The provisions of the *CMA* clearly indicate that Parliament did not consider holding differing views on same-sex marriage, to be contrary to "core national values"[48]. It is neither unlawful discrimination,nor contrary to core national values,for a religious official to refuse to perform a same-sex marriage.

36. A British Columbia-specific example of the commitment to pluralism is shown in section 41 of the *Human Rights Code*[49], without which "the denominational schools that have always been accepted as a right of each denomination in a free society would be eliminated."[50]

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presentation to Canadian Association of Law Teachers (CALT) Annual Meeting in Victoria, British Columbia, June 4, 2013

[41] S.C. 2005, c.33

[42] Benson and Bussey, *supra.*, at p.xxix, n.18

[43] *R. v. Mills*, [1999] 3 S.C.R. 668, at paras. 56-60

[44] *Vriend v. Alberta*, [1998] 1. S.C.R. 493, at para. 139.

[45] *Civil Marriage Act*, S.C. 2005, c.33

[46] *Ibid.*, s.3

[47] *Ibid.*, s.3.1

[48] *Loyola*, *supra.*, at para. 46

[49] *Human Rights Code*, R.S.B.C. 1996, c. 210, section 41

[50] *Re Caldwell and Stuart* (1984), 15 D.L.R. (4th) 1, at pp. 19-20

G. Conclusion.

37. In contrast to the approach of this court and the British Columbia Court of Appeal, the Ontario Court of Appeal and the Law Societies' position promotes a form of liberalism that views certain rights as "trump", and religious rights as "less than". If Canadian secularism is interpreted to mean that state institutions may be allowed to engage in a suppression of religion in public matters, or the relegation of religious freedom to private thought, worship and creedal affirmation, the interests and initiatives of religious citizens, and many religious institutions, including the RCAV, will be directly and prejudicially affected.

38. The state, which in this proceeding takes the form of the Law Societies, must show "respect for all postures towards religion".[51] For the state to promote a meaning of secularism which requires the absence of religion from public life would be to "distort liberal principles in an illiberal fashion"[52] and undermine the commitment to pluralism.

Part 4: COSTS

39. These interveners do not seek costs and seek an order that they not be subject to an award of costs.

Part 5: ORDER SOUGHT

40. These intervenerstake no position on the disposition of the within appeal.

All of which is respectfully submitted this 7th day of September, 2017.

Per: _____

Gwendoline Allison
Co-counsel for the interveners The Roman Catholic Archdiocese of Vancouver, the Catholic Civil Rights League and the Faith and Freedom Alliance

Per: _____

Philip H. Horgan
Co-counsel for the interveners The Roman Catholic Archdiocese of Vancouver, the Catholic Civil Rights League and the Faith and Freedom Alliance

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[51] *SL v. Commission Scolaire des Chenes*, 2012 SCC 7, [2012] 1 SCR 235 at para. 32
[52] *Chamberlain*, *supra*., at para. 137

Part 6: TABLE OF AUTHORITIES

Rt Hon Beverly McLachlin, PC, "Freedom of Religion and the Rule of Law: A Canadian Perspective" in Douglas Farrow, ed., Recognizing Religion in a Secular Society: Essays in Pluralism, Religion and Public Policy (Montreal: McGill-Queen's University Press, 2004) 12	3, 4	12
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Newman, Dwight G., "On the Trinity Western University Controversy: An Argument for a Christian Law School in Canada" (June 22, 2103) at p. 5 (2013) 22:3 Const. Forum 1-14, revised version of presentation to Canadian Association of Law Teachers (CALT) Annual Meeting in Victoria, British Columbia, June 4, 2013	8	33

Legislative Provisions

***Human Rights Code*, R.S.B.C. 1996, c. 210, section 41**

If a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or corporation must not be considered to be contravening this Code because it is granting a preference to members of the identifiable group or class of persons.

Canadian Charter of Rights and Freedoms

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms

2. Everyone has the following fundamental freedoms:

(*a*) freedom of conscience and religion;

(*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(*c*) freedom of peaceful assembly; and

(*d*) freedom of association.

Equality Rights

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

***Civil Marriage Act,* S.C. 2005, c.33**

An Act respecting certain aspects of legal capacity for marriage for civil purposes

Preamble

WHEREAS the Parliament of Canada is committed to upholding the Constitution of Canada, and section 15 of the*Canadian Charter of Rights and Freedoms* guarantees that every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination;

WHEREAS the courts in a majority of the provinces and in one territory have recognized that the right to equality without discrimination requires that couples of the same sex and couples of the opposite sex have equal access to marriage for civil purposes;

WHEREAS the Supreme Court of Canada has recognized that many Canadian couples of the same sex have married in reliance on those court decisions;

WHEREAS only equal access to marriage for civil purposes would respect the right of couples of the same sex to equality without discrimination, and civil union, as an institution other than marriage, would not offer them that equal access and would violate their human dignity, in breach of the *Canadian Charter of Rights and Freedoms*;

WHEREAS the Supreme Court of Canada has determined that the Parliament of Canada has legislative jurisdiction over marriage but does not have the jurisdiction to establish an institution other than marriage for couples of the same sex;

WHEREAS everyone has the freedom of conscience and religion under section 2 of the *Canadian Charter of Rights and Freedoms*;

WHEREAS nothing in this Act affects the guarantee of freedom of conscience and religion and, in particular, the freedom of members of religious groups to hold and declare their religious beliefs and the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs;

WHEREAS it is not against the public interest to hold and publicly express diverse views on marriage;

WHEREAS, in light of those considerations, the Parliament of Canada's commitment to uphold the right to equality without discrimination precludes the use of section 33 of the *Canadian Charter of Rights and Freedoms* to deny the right of couples of the same sex to equal access to marriage for civil purposes;

WHEREAS marriage is a fundamental institution in Canadian society and the Parliament of Canada has a responsibility to support that institution because it strengthens commitment in relationships and represents the foundation of family life for many Canadians;

AND WHEREAS, in order to reflect values of tolerance, respect and equality consistent with the *Canadian Charter of Rights and Freedoms*, access to marriage for civil purposes should be extended by legislation to couples of the same sex;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

* * *

3 It is recognized that officials of religious groups are free to refuse to perform marriages that are not in accordance with their religious beliefs.

3.1 For greater certainty, no person or organization shall be deprived of any benefit, or be subject to any obligation or sanction, under any law of the Parliament of Canada solely by reason of their exercise, in respect of marriage between persons of the same sex, of the freedom of conscience and religion guaranteed under the*Canadian Charter of Rights and Freedoms* or 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.

SCC Court File No: 367209

TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT and **LAW SOCIETY OF UPPER CANADA**
Appellants Respondent

SCC Court File No: 37318

LAW SOCIETY OF BRITISH COLUMBIA and **TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT**
Appellant Respondents

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

FACTUM OF THE INTERVENERS, THE ROMAN CATHOLIC ARCHDIOCESE OF VANCOUVER, THE CATHOLIC CIVIL RIGHTS LEAGUE and THE FAITH AND FREEDOM ALLIANCE

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