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

FACTUM OF THE INTERVENERS, THE EVANGELICAL FELLOWSHIP OF CANADA AND CHRISTIAN HIGHER EDUCATION CANADA

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PART I – OVERVIEW AND FACTS

1. The Evangelical Fellowship of Canada (the "EFC") and Christian Higher Education Canada ("CHEC") (collectively, "These Interveners") are representatives of Canada's evangelical community, and its higher education institutions. Nearly all CHEC members have codes of conduct similar to that at TWU and every one affirms the EFC Statement of Faith. Codes of conduct are of particular importance to evangelical communities and are within the core of the free exercise of religion as understood both legally and historically.

2. Canada's history features many examples of tolerance for the free exercise of religion both by individuals and communities choosing to educate their members. Religious education rights were universalized under the Charter, and *Trinity Western University v. British Columbia College of Teachers*[1] ("*TWU 2001*") properly focussed on whether there was any genuine concern with the qualifications of TWU graduates. Far from being eclipsed by social or legal changes, the principles in *TWU 2001* were recently reaffirmed and deepened by this Court in *Loyola High School v. Attorney General of Quebec*[2] and *Mouvement laïque québécois v. Saguenay (City)*[3].

3. The decisions at issue in these appeals – like in *TWU 2001* – effected the categorical exclusion of members of a religiously informed educational community from state-controlled accreditation based solely on the content of a voluntary, religiously-informed code of conduct. Evangelicals have a long history of being excluded and discriminated against by majority communities – both religious and non-religious. This coercive imposition of the majority view is a straightforward breach of freedom of religion. The claim that this freedom must be 'balanced' against state objectives in protecting other minorities confuses categories of rights and erects conflicts where none exist. Religious persons and communities do not surrender their *Charter* rights when they enter the public sphere or when they comply with state regulatory requirements.

PART II – ISSUES

4. These Interveners focus their submissions on the perspective of the evangelical community and its higher educational institutions, on the legal issues raised by the parties.

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1 *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 SCR 772 [*TWU 2001*].
2 *Loyola High School v. Attorney General of Quebec*, [2015] 1 SCR 613 ["*Loyola*"].
3 *Mouvement laïque québécois v. Saguenay (City)*, [2015] 2 SCR 3 ["*Saguenay*"].

PART III – ARGUMENT

a) Codes of Conduct are inextricable from Evangelical faith

5. EFC's 43 member denominations include a catalogue of European religious minorities whose beliefs and practices separated them, from their genesis, from established (and frequently state-sanctioned) churches, resulting in a long history of persecution. These include TWU's own denomination of evangelical free churches and various Baptist, Mennonite, Methodist, and Wesleyan denominations. This pattern of persecution continued in pre-Confederation Canada where evangelical "nonconformists" were banned from becoming lawyers until 1833.[4]

6. The scope of the guarantee of freedom of religion is "derived from its history"; similarly, freedom of association "has its roots in the protection of religious minority groups."[5] Evangelicals have always been, and remain, a "minority religious subculture"[6] in Canada who have depended on this Court's robust protection of freedom of religion, which includes "codes of conduct", "practice" and "teaching and dissemination", from all state coercion, including "indirect forms of control which determine or limit alternative courses of conduct available."[7]

7. "Religion is about religious beliefs, but also about religious relationships".[8] Communal and institutional practice of evangelical belief is constitutionally protected. Since Roman times, Christians have self-defined, in part, through statements of faith and codes of conduct. For evangelicals, "the practice of faith cannot be separated from personal obedience to standards of sexual conduct."[9] There is nothing new, novel, or reactive about the sexual injunctions in the Community Covenant. They reflect core, orthodox Christian belief consistently upheld within Christian communities for the last two millennia, and have been contained in church and Christian university codes of conduct throughout the world for centuries. Codes of conduct

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4 *Trinity Western University v. The Law Society of Upper Canada*, 2015 ONSC 4250, at para. 22 ["*TWU v. LSUC*"]; *Congrégation des témoins de Jéhovah v. Lafontaine (Village)*, 2004 SCC 48, at para. 66 (dissent, but not on this point).

5 *Mounted Police Association v. Canada*, 2015 SCC 1 at paras. 35, 56, 57, 48 ("*MPA*").

6 *Trinity Western University v. The Law Society of British Columbia*, 2015 BCSC 2326, at para. 24; *TWU v. LSUC*, *supra*, at para. 10.

7 *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 at para. 95 ("*Big M*").

8 *Loyola*, *supra*, at para. 59; See also *R. v. Edwards Books*, [1986] 2 S.C.R. 713 at 808.

9 *Trinity Western University v. Nova Scotia Barrister's Society*, 2015 NSSC 25, at footnote 17 ["*TWU v. NSBS*"].

strengthen religious communities, in this case, Canadian evangelicalism[10] – an objective which this Court confirms is constitutionality protected.[11] Direct and indirect state attempts to cause evangelicals to adopt a different covenant, or to punish evangelicals for the content of the covenant, is precisely what the *Charter* seeks to prevent.[12] Yet multiple BC benchers stated,[13] and the LSBC's original litigation position expressed,[14] the intent that rejecting TWU Law graduates would cause TWU to *change* the Community Covenant – an unconstitutional state objective.[15]

8. The liberal democratic solution to disagreements – hard-learned from centuries of religious wars – is the freedom for voluntary communities to determine their own membership and to subscribe to beliefs **and** practices which may conflict with those of the majority. Many religious beliefs and practices – including positive and negative injunctions regarding movement, diet, occupation, dress and other subjects – will not be palatable to the general population, but no one is required to join such a religious community, and everyone is free to leave (and join or start a different one) without fear of reprisal. The *Charter* restrains the coercive power of the State from being used by those sympathetic to one group from enforcing their views on another group; this preserves the freedom of all citizens – majority and minority alike – to choose their own affiliations, be they religious, sexual, or otherwise. 'Leveling the playing field' by abolishing the rights of religious groups to define their own membership[16] sacrifices authentic pluralism and reduces real religious choice for all. By contrast: "[t]he Charter is not a blueprint for moral conformity. Its purpose is to protect the citizen from the power of the state."[17] Open

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10 Reimer Affidavit [**LSBC Record, Vol. 2**, at pp. 239-251]; Longjohn Affidavit [**TWU BC Record Vol. 1**, at pp. 18-25].

11 *Loyola*, *supra*, at paras. 60, 63, 67.

12 *Big M.*, *supra*, at para. 95.

13 BC Bencher speeches: **LSBC Record, Vol. VII**, at p. 1149 lines 20-22 (Arvay); p. 1151 lns. 17-19 (Maclaren); p. 1158 lns. 1-3 (Lloyd); p. 1170 lns. 21-25 (Ward). Press release: **TWU BC Record, Vol. 2**, at p. 169, fourth paragraph (Lindsay). Meeting minutes: **LSBC Record, Vol. VII,** at p. 1277, third-last paragraph (Crossin). The benchers as a whole were prepared to approve TWU if it "agreed to remove the offending portions of the Covenant": *Trinity Western University v. The Law Society of British Columbia*, 2016 BCCA 423 at paras. 176 and 183.

14 LSBC Amended Petition Response, at para. 253 [**LSBC Supplementary Record**, at p. 41].

15 This is fatal at the first step of the *R. v. Oakes*, [1986] 1 SCR 103 ["*Oakes*"] and *Doré v. Barreau du Quebec*, [2012] 1 SCR 395 analysis: *Big M.*, *supra*, at paras. 80-81, 95.

16 As argued for throughout the **LSUC Factum**, e.g. at para. 78.

17 *TWU v. NSBS*, *supra*, at para. 10.

secularism is the lifeblood of robust pluralism. [18] There is nothing constitutionally problematic with the statement that "TWU is not for everybody."[19]

9. It is universally acknowledged that the law societies cannot impose an individual religious test for ongoing membership *circa* 1832 Upper Canada. One's personal adherence (old or new) to any religious belief – or none – is irrelevant to competence as a lawyer. Indeed, the law societies welcome individual evangelical law students and lawyers - notwithstanding their religious beliefs and practices regarding sexuality - except if they obtain their legal education in a religious educational community.[20]

10. The proposition that the *Charter* permits the exclusion of evangelicals *as a group*, while requiring their inclusion *as individuals*, is regressive and contradictory.[21] It reflects an atomized approach to freedom of religion that is inconsistent with the very nature of the right and was properly rejected in *TWU 2001* for reasons re-affirmed in *Loyola*:

> To tell [an evangelical] [university] how to [manifest] its faith undermines the liberty of the members of its community who have chosen to give effect to the collective dimension of their religious beliefs by participating in a denominational [university].[22]

11. *Loyola* also held that "measures which undermine the character of lawful religious institutions and disrupt the vitality of religious communities represent a profound interference with religious freedom." The law societies, by contrast, perceive at most only a very minor impact, referring to the Community Covenant as a "choice", "not required" or "not necessary."[23] This reverses the onus by forcing evangelicals to demonstrably justify the Community Covenant as minimally impairing non-evangelicals' access to an evangelical university while achieving a pressing and

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18 *Chamberlain v. Surrey School District No. 36*, [2002] 4 SCR 710, at para. 137 (Gonthier J. in dissent, but adopted by majority at para. 3 on this point); see also Maclure J. and Taylor, C. *Secularism and Freedom of Conscience* (Cambridge, MA: Harvard University Press, 2011) at pp. 3, 10-13, 19, 40, 46-48 **Book of Authorities of the Evangelical Fellowship of Canada and Christian Higher Education Canada, Tab 1 ["EFC/CHEC Authorities"]**.

19 *TWU 2001*, *supra*, para. 25.

20 e.g. **LSBC Factum**, at paras. 172; LSBC Amended Petition Response, at paras. 212-13, 229, 293 [**LSBC Supplementary Record** at pp. 34, 36-37, 46].

21 *MPA*, *supra*, at para. 62. Communal religious rights, like language rights, can by definition only be exercised in community: *R. v. Beaulac*, [1999] 1 S.C.R. 768, at para. 20.

22 *Loyola*, *supra*, at para. 62.

23 *Loyola*, *supra*, at paras. 61, 64, 67; LSBC Amended Petition Response paras. 261, 273, 282, 284 [**LSBC Supplementary Record**, at pp. 41-42, 43, 45]. **LSBC Factum**, at paras. 15, 17, 37, 148-149, 152, 157; **LSUC Factum** at paras. 80, 81, 82.

substantial religious objective.[24] That is not how the *Charter* works.[25] *TWU 2001* rejected the attempt to characterize the Community Covenant as falling outside s. 2(a) protection.[26]

12. The evaluation of an evangelical code of conduct must accept the legitimacy of, and seek as much as possible to adopt, an evangelical perspective. At the vast majority of CHEC institutions, students, faculty, and staff choose to commit to codes of conduct like the one at issue in this case because they define, protect, and support a religious community with a common religious purpose. CHEC institutions and many evangelical communities simultaneously have their own institutional religious mission, while also being the essential vehicle by which their faculty and staff exercise their freedom of religion to provide a religious education, and by which their students exercise their freedom of religion to receive a religious education, wherein the character of all involved are formed in Christian community. The institutional, communal, and individual religious rights are all inter-dependent and mutually supporting. Religious education is a religious undertaking which can be achieved *only communally*. A handful of evangelicals at each of Canada's public law schools cannot recreate what will be available at TWU Law, which would represent the only evangelical faculty of law in Canada.[27] That is why saying that evangelicals could simply study law elsewhere is not an answer to the rights breach.

13. This Court's jurisprudence is unequivocal that it is not up to the State to become the arbiter of religious dogma. Here, the State has done just that,[28] by advancing particular theological or doctrinal positions based on their view of what it means (or ought to mean) to be a (good) Evangelical Christian.[29] They also seek to shrink s. 2(a) by removing protection for positive manifestations of religious belief (such as studying in a religious community), leaving only

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24 This is the premise of **LSBC Factum** at paras. 15 and 156.

25 *TWU v. NSBS*, *supra*, at para. 10.

26 The belief/conduct "line" at para. 36 of *TWU 2001*, *supra*, related to the speculative fear that TWU graduates would discriminate in the classroom ("conduct"). This Court clearly accepted that the mandatory nature of the Community Covenant was protected "belief".

27 *TWU 2001*, *supra*, at paras. 3, 23, 24, 73; *Loyola*, *supra*, at para. 6 expressly recognized teachers' rights; codes of conduct for religious school teachers are valid: *Caldwell v. Stuart*, [1984] 2 S.C.R. 603; *Daly v. Ontario (AG)* (1999), 44 O.R. (3d) 349 at p. 362.

28 EFC adopts the submissions at para. 108 of **TWU's BC Factum**.

29 Suggestions that the Community Covenant is at "outer reaches" or "periphery," or not "essential," "not … dictated by a religious belief … [but] rather [by] choice" or "preference"; de-accreditation would have only a "trivial," "limited," or "minimal" impact on freedom of religion: **LSUC Factum**, at paras. 81, 85, 87, 122, 123, 127. **LSBC Factum**, at paras. 7, 9, 21, 146, 162, 164-165, 180, 182, 219 (see also paras. 6, 22, 162, 202, 203, 214).

protection against state compulsion to do something which one's religion prohibits.[30] Either approach would undermine three decades of *Charter* jurisprudence and drastically limit essential *Charter* protections.

b) Demonstrable justification in a free and democratic society

14. These appeals demonstrate the problem with two legal tests by which *Charter* claims are adjudicated. Under the *Oakes* framework, the State bears the burden of demonstrably justifying a *Charter* violation under a stringent two-part test, and the standard of review is correctness. Under the *Doré/Loyola* framework, the state-actor's decision must only be "reasonable", implying a range of acceptable solutions, lowering the standard of review and effectively reversing the onus of proof.

15. These appeals demonstrate that the *Doré/Loyola* framework is flawed in that *Charter* rights receive inconsistent protection: the freedom of religion of TWU is protected in British Columbia but not in Ontario. In one case, the decision was found to be reasonable while in the other, it was not.

16. These Interveners submit that regardless of the framework, the standard upon which a *Charter* violation may be upheld—that is "demonstrably justified in a free and democratic society"—must be taken from section 1 of the *Charter* itself. [31] This applies even in the case of a judicial review where the *Doré* framework is followed.[32]

17. In *Oakes*, Dickson C.J. identified the "values and principles essential to a free and democratic society" as including "accommodation of a wide variety of beliefs, [and] respect for cultural and group identity." In *Big M.*, he described a "free society" as "one which can accommodate a wide variety of beliefs … and codes of conducts."[33] This view was echoed again in *Ross v. New Brunswick School District No. 15*[34].

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30 As argued in **LSUC Factum** at paras. 84-85 and 120; LSBC Factum at para. 209. This Court should similarly reject the argument advanced in **LSBC Factum** at paras. 19 and 160 that since TWU law graduates will in their future workplaces, associate with those who do not share their religion, it is therefore illegitimate to seek to study law with co-religionists. By this flawed logic, since most evangelicals work with those of other religions on Monday, it is illegitimate for them to associate with fellow evangelicals on Sunday.

31 *Canadian Charter of Rights and Freedoms*, Part I of *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11*, at s. 1 ["*Charter*"].

32 *Bracken v. Fort Erie (Town)*, 2017 ONCA 668, at para. 63.

33 *Oakes*, *supra*, at para. 64; *Big M.*, *supra*, at para. 95.

34 *Ross v. New Brunswick School District No. 15*, [1996] 1 SCR 825, at para. 91.

18. In discussing the meaning of a "democratic society", this Court has repeatedly emphasized similar themes – i.e. that the Canadian understanding of 'democratic society' rejects majoritarian discrimination in favour of protecting minority rights.[35] Indeed, in *TWU 2001*, this Court noted that "tolerance of divergent beliefs is a hallmark of a democratic society."[36]

19. A "free and democratic society" is therefore robustly pluralistic. The majority is restrained from utilizing the coercive power of the State to impose its views on the minority, even in matters which it regards as important. Religious persons are welcomed into the public sphere and afforded equal treatment and benefit under the law through disciplined state neutrality towards competing religious and moral views.[37] The State's burden to demonstrably justify a limit on freedom of religion is a high one. The justification must be established by evidence, and is no more easily met by state regulation of religiously-educated professionals than in any other religious context.

20. The *Doré/Loyola* framework inappropriately unmoors the State's burden from the notion of a "free and democratic society" which resulted in the Ontario courts upholding an incorrect (but allegedly 'reasonable' decision), which also created inconsistent *Charter* protection from that enjoyed in British Columbia, Nova Scotia and elsewhere.

21. There is no demonstrable justification for the severe and multifaceted *Charter* breaches inherent in rejecting TWU law graduates. Indeed, there is no need for this Court to choose between the LGBTQ community and evangelicals at all. Freedom is not a zero sum game.

22. The law societies' laudable commitment to diversity, tolerance, and equality rights simply needs to be consistently applied in this case, in line with this Court's consistent *Charter* jurisprudence, to welcome TWU Law Graduates to the bar, together with those of all faith commitments – or none.

c) **One does not forfeit *Charter* protection by entering the public sphere**

23. The Ontario Court of Appeal stated that the decision to not accredit TWU does not violate its

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35 *Andrews v. Law Society (British Columbia),* [1989] 1 SCR 143, at para. 17; *Hill v. Church of Scientology of Toronto,* [1995] 2 S.C.R. 1130 at para. 92.

36 *TWU 2001*, *supra,* at para. 36.

37 Zagorin, P., *How the Idea of Religious Toleration Came to the West* (Princeton U.P. 2003) at p. 233, **EFC/CHEC Authorities, Tab 2**; *Saguenay*, *supra,* at para. 137.

religious freedom, but rather, simply denies it a public benefit.[38] In other words: a religious individual or organization surrenders its *Charter* rights when it enters the public sphere.

24. This notion is totally contrary to this Court's jurisprudence that freedom of religion includes:
    a) "the right to declare religious beliefs openly […] the right to manifest religious belief by worship and practice or by teaching and dissemination";[39]
    b) both individual and collective aspects;[40]
    c) the right not to have society interfere with profoundly personal beliefs;[41]
    d) beliefs and conduct that may not be recognized by religious experts as being obligatory, provided it has a nexus with religion in order to connect with the divine or as a function of spiritual faith.[42]

25. Applying the legal logic that a "choice to enter into the public domain of providing … education"[43] requires religious institutions to become religiously "neutral" would justify withholding government approvals from all of CHEC's universities, as well as all religious elementary and secondary schools in Canada, be they Catholic, Jewish, Islamic, evangelical, or otherwise, until they abandon their religious identity and simply became parallel public schools.

26. Such an approach would be anathema to the very purpose of the *Charter*.

27. This Court has made clear that in the education context:
    a) state-run public schools must have no religious indoctrination;[44] and
    b) members of religious groups have an equally jealously guarded right under the Constitution and international law to create religious educational institutions where the religious group determines belief and conduct requirements for administrators, staff, and students.[45]

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38 *Trinity Western University v. The Law Society of Upper Canada*, 2016 ONCA 518, at paras. 138, 143.

39 *Big M.*, *supra*, at para. 94.

40 *Edwards Books*, *supra*, at para. 145; *Loyola*, *supra; Alberta v. Hutterian Brethren of Wilson Colony*, [2009] 2 SCR 567.

41 *Edwards Books*, *supra*, at para. 97; *Loyola*, *supra*, at para. 59.

42 *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, at paras. 43, 46.

43 **LSUC Factum**, at paras. 24(e), 106, and 128(c); **LSBC Factum**, at para. 171

44 *S.L. v. Commission scolaire des Chênes*, [2012] 1 SCR 235 and citations therein including at paras. 19-20.

45 (1) *Charter* s. 2(a): *Loyola*, *supra;* and *TWU 2001*, *supra.* (2) *Constitution Act, 1867*, s. 93 – a "bill of rights for the protection of minority religious groups" which reflected the political-religious compromise essential to Confederation; *Reference Re Bill 30*, [1987] 1 S.C.R. 1148 at 1173-1174; Hogg, P. *Constitutional Law of*

28. The *Charter* demands symmetry between these principles. "An essential ingredient of the vitality of a religious community is the ability of its members to pass on their beliefs to their children, whether through instruction in the home or participation in communal institutions."[46]

29. When a faith-based school seeks state accreditation, it is not seeking a "public benefit." For those who choose to attend or teach at TWU or other CHEC institutions, the provision or receipt of a religious education is an essential component of practising one's faith.[47] This Court's jurisprudence consistently situates religious education within s. 2(a), not within the "public benefit" paradigm.[48]

30. These Interveners celebrate that Canadians have never supported the State being the sole educator. In a free and democratic society, private institutions are equally entitled to prepare graduates for service to the broader society, in respect of which the State regulates only educational (not admission or theological) standards.[49] History has shown that government schooling has not been immune from the same problems as experienced at private schools.[50]

31. In any case, when a faith-based school seeks state- accreditation, it is not seeking a "public benefit," but rather, it is seeking the protection afforded in section 2(a) of the *Charter*.

32. This Court properly rejected the State's invocation of democratic sanction in both *Andrews* and *Roncarelli*.[51] So too should it reject the reversal of the BC benchers' original and principled decision, precipitated by a SGM and referendum conducted in the shadow of a re-election year.

33. Reliance on maintaining public confidence to justify breaching evangelicals' rights is a call to appease intolerance of a minority faith. As acknowledged in Nova Scotia, state-sponsored

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Canada, loose-leaf, 5th ed. (Toronto: Thomson Reuters Canada, 2007-) p. 57-3 ["Hogg"] **EFC/CHEC Authorities, Tab 3**; (3) *Universal Declaration of Human Rights*, at Article 26(3); (4) *International Covenant on Civil and Political Rights*, at Article 18(4).

46 Hogg, *supra*, at 57-19, **EFC/CHEC Authorities, Tab 3**; *Loyola*, *supra*, at para. 64 (emphasis added); see also *Loyola*, *supra*, at para. 33.

47 *TWU v. NSBS*, *supra*, at para. 230.

48 *R. v. Jones*, [1986] 2 S.C.R. 284, at para. 21; *Loyola*, at para. 69; *B.(R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 R.C.S. 315, at paras. 83, 86.

49 Thiessen, E. *In Defence of Religious Schools and Colleges* (Montreal & Kingston: McGill-Queen's University Press, 2001), at p. 224 **EFC/CHEC Authorities, Tab 4**.

50 Summary of the Final Report of the Truth and Reconciliation Commission of Canada (Ottawa: TRCC, 2015) at 1, **EFC/CHEC Authorities, Tab 5**.

51 In *Roncarelli v. Duplessis*, [1959] S.C.R. 121 at 134, Mr. Duplessis invoked a "duty … in conscience… to fulfill the mandate that the people had given me and renewed with an immense [electoral] majority."

exclusion of one otherwise-qualified group is "not how social progress is achieved in a liberal democracy."[52]

34. Special pleading that the important societal role played by lawyers justifies discrimination should be rejected for the same reason as in *Andrews*. Robust institutional diversity may be most important in disciplines closest to the levers of power and social change, such as the legal and teaching professions.

35. The kind of principled neutrality required was recently demonstrated by the Ontario Human Rights Tribunal's acknowledgement that a private evangelical school's freedom of religion permits it to self-define and its parents to freely associate together.[53]

36. Following the Ontario Court of Appeal's rationale would mean that in the case above, when the Ontario Human Rights Tribunal acknowledged the right of a private religious school to self-define, it somehow approved of its biblical view of marriage. Such a conclusion would be absurd.

37. A religious individual, organization or community does not lose or forfeit its *Charter* rights by entering the public sphere or by seeking regulatory approval. To approve of such an argument would empty s. 2(a) of the *Charter* of any practical meaning.

PART IV – COSTS

38. These Interveners do not seek costs and ask that no order as to costs be ordered against them.

PART V – ORDER SOUGHT

39. These Interveners do not seek any particular terms of order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED SEPTEMBER 5, 2017

Counsel for the Evangelical Fellowship of Canada and
Christian Higher Education Canada

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52 *TWU v. NSBS*, *supra*, at paras. 247, 263.

53 *H.S. v. The Private Academy*, 2017 HRTO 791, at para. 78.

PART VI – TABLE OF AUTHORITIES

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Other References

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Legislative Provisions

Canadian Charter of Rights and Freedoms, Part I of *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11*	
Rights and freedoms in Canada **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.	**Droits et libertés au Canada** **1.** La *Charte canadienne des droits et libertés* garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.
Fundamental freedoms **2.** Everyone has the following fundamental freedoms: (*a*) freedom of conscience and religion;	**Libertés fondamentales** **2.** Chacun a les libertés fondamentales suivantes : *a*) liberté de conscience et de religion;

Universal Declaration of Human Rights, United Nations General Assembly, 1948
Article 26. (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. (3) Parents have a prior right to choose the kind of education that shall be given to their children.

International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49

Article 18

[...]

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

SCC Court File No: 367209

TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT
Appellants

and

LAW SOCIETY OF UPPER CANADA
Respondent

SCC Court File No: 37318

LAW SOCIETY OF BRITISH COLUMBIA
Appellant

and

TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT
Respondents

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

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FACTUM OF THE INTERVENERS, THE EVANGELICAL FELLOWSHIP OF CANADA AND CHRISTIAN HIGHER EDUCATION CANADA

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