SCC 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

(Appellant)

-and-

TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT

RESPONDENTS

(Respondents)

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PART 1 – STATEMENT OF FACTS

A. Overview

1. The issue in this appeal is how the *Charter* rights of TWU's religious community and LGBTQ persons should be proportionately balanced in the context of access to an institution integral to the administration of justice, the legal education system.

2. The Law Society of BC respectfully submits that a definitive answer is required from the Supreme Court of Canada on this issue, which has divided courts in Ontario and British Columbia, law societies across Canada, the legal profession generally, and the public.

3. This is necessary to provide guidance moving forward, not only to TWU, its prospective students, and to law societies, but also to the BC government, which must decide whether to accredit TWU's proposed law school.

4. The process undertaken by the Law Society of BC in adopting the resolution to not approve TWU's proposed law (the "**Resolution**") has been considered by the lower courts in BC.

5. However, as recognized by the BC Court of Appeal, this procedural background does not affect the substance of the issue that needs to be resolved: whether the Resolution strikes a proportionate balance of the competing *Charter* rights in the context of the Law Society's statutory obligation to protect the public interest in the administration of justice, of which admission to law school is an essential component.

6. The Law Society of BC respectfully submits that a close analysis shows that the Resolution best achieves the statutory objective of ensuring public confidence that the legal system is open to everyone without discrimination, while at the same time reasonably accommodating the religious and association rights of TWU's religious community.

7. Put another way, but to the same effect, the Resolution ensures equal access to the legal profession without discrimination, thereby safeguarding the important equality and dignity interests of LGBTQ persons, while at the same time leaving considerable scope for the free exercise of religion at TWU's proposed law school.

8. With respect to the Law Society of BC's statutory mandate, there is an important public interest in ensuring that access to all parts of the justice system, including law schools as the entry point to the legal profession, is provided on an equal basis.

9. At the same time, it is equally important that freedom of religion is accommodated as much as possible within a system that ensures equality of opportunity to access the legal profession and the judiciary.

10. An appropriate balance – or reconciliation– of these rights must be realized in each specific case, in a manner consistent with the statutory mandate of the Law Society of BC to protect the public interest in the administration of justice.

11. With respect to freedom of religion, members of TWU's religious community remain free to hold, express, and fully live their lives according to their religious views.

12. And importantly, the Resolution does not impact TWU's ability to teach law from an evangelical Christian perspective.

13. These religious beliefs and activities, including the ability to promulgate the evangelical Christian faith in the context of a legal education, are not affected by the Resolution.

14. The only limit the Resolution imposes is on TWU's ability to control, through its admissions and disciplinary policies, the private sexual behaviour of LGBTQ students outside of the university.

15. These admission and disciplinary policies cannot be justified on the basis that it is necessary to restrict the private sexual activity of students in order to ensure a learning environment in which evangelical Christianity can flourish.

16. That is because adhering to the evangelical faith is not a condition of admission to TWU, and TWU does not prevent persons who hold and express different views, including different views on same-sex marriage, from attending TWU.

17. To the contrary, on TWU's own evidence, evangelical Christianity does not require isolation from those of different faiths or from persons who engage in practices of which they do not approve.

18. Members of TWU's religious community interact with persons who believe and act differently than they do, both at TWU and in the wider world.

19. And once in the legal profession, members of TWU's religious community will not be able to isolate themselves from persons who do not abide by evangelical Christian behavioural norms. They will have colleagues, co-workers, clients, and judges, who are members of the LGBTQ community or who engage in sexual activities of which they do not approve.

20. Nevertheless, TWU is proposing to effectively exclude LGBTQ people from admission to its proposed law school unless they commit to abstain from same sex relationships.

21. What LGBTQ people do in private, outside of the classroom, only affects the religious and associational rights of TWU's religious community at the periphery, as it still leaves all members of TWU's religious community with "a meaningful choice to follow his or her religious beliefs and practices."[1]

22. Thus, the Law Society of BC respectfully submits that, properly analyzed, limiting TWU's ability to control the private sexual relations of LGBTQ students only has a minimal impact on the religious and associational rights of TWU's religious community.

23. Conversely, approving TWU's proposed admission policy would have a significant negative impact on LGBTQ people,[2] because they are effectively precluded from attending TWU's proposed law school; even within a legally recognized same sex marriage, they must commit to repressing their sexual identity in order to be admitted.

24. However, the harmful impact is not confined to prospective LGBTQ students who would be effectively denied access to TWU's proposed law school, and who would therefore have unequal access to the legal profession compared to heterosexual students.

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[1] *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37 ("***Hutterian Brethren***").

[2] It has a similar impact on women, because they have to effectively relinquish their reproductive rights to attend TWU's proposed law school. While this was not the focus of the Benchers' debates in B.C., it was a point made in submissions to them, and is something that should be taken into account in assessing whether the Resolution strikes a proportionate balance of all relevant *Charter* rights and values.

25. Additionally, and most importantly, the approval by the regulator of the legal profession of a law school that discriminates in its admissions policy on the basis of a persons' sexual identity would have a serious impact on the LGBTQ community as a whole.

26. It would injure the human dignity, and hence sense of self-worth, of LGBTQ persons generally, because it would send a clear signal that this discriminatory treatment is consistent with the public interest in the administration of justice, which the Law Society of BC is required to uphold.

27. Therefore, it is not simply a matter of whether, or to what extent, LGBTQ people would have a more limited opportunity to obtain a legal education than other persons in British Columbia; it would also be a serious affront to the dignity of all LGBTQ persons, particularly given that approval by the Law Society necessarily involves an acceptance of this discriminatory practice in the context of the justice system.

28. At the same time, the Resolution does not impact the essential elements of religious freedom, including each individual's freedom to hold, express, and live according to his or her religious beliefs, nor does it undermine the ability of evangelical Christians to obtain a legal education that is consistent with their religious outlook.

29. Approving a law school with a particular religious outlook may result in persons who choose to attend TWU being exposed in the classroom to the religious beliefs of evangelical Christians that do not accord with their own convictions or values.

30. Thus, people choosing to attend TWU's proposed law school would have to be willing to accept – although not necessarily agree with or adopt – the religious nature of TWU's proposed law school, which may dissuade them from attending.

31. But that is their choice. The Resolution simply ensures that persons have that choice, and are not barred at the door by admissions policies that categorically exclude them.

32. In this way, the Resolution rejects an absolutist approach to either equality rights or religious freedom, but reconciles them in a manner consistent with the Law Society of BC's statutory obligations.

33. It provides considerable scope for the exercise of freedom of religion at TWU, while protecting students who would otherwise be forced to repress their sexual identity to attend

TWU's proposed law school, which is not a matter of choice, but rather goes to the core of their identity.

34. The Law Society of BC submits that the approach taken in the Resolution is the most appropriate and proportionate balancing in the circumstances of this case of the competing *Charter* rights with the fulfillment of the Law Society's mandate to protect the public interest in the administration of justice.

B. TWU and Its Covenant

35. Trinity Western University ("**TWU**") is authorized under the *Trinity Junior College Act*, which provides that its object "shall be to provide for young people of any race, colour, or creed, university education in the arts and sciences with an underlying philosophy and viewpoint that is Christian".[3]

36. TWU states that it is open to "all students who qualify for admission, recognizing that not all affirm the theological views that are vital to the University's Christian identity".[4] Therefore, while TWU has a Statement of Faith, it does not require all students to proclaim adherence to it.[5]

37. Students are "free to hold and express diverse viewpoints on the legal, religious, and social issues arising in relation to homosexuality and same-sex relationships, even if they are contrary to TWU's religious beliefs and positions".[6] And according to TWU's experts, evangelical Christianity is an "engaged" subculture, and therefore does not require being isolated from others of different faiths, worldviews or practices.[7]

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[3] *Trinity Junior College Act*, S.B.C. 1969, c. 44, s. 3(2). See also *Trinity Western University v. The Law Society of British Columbia*, 2015 BCSC 2326 at para 132 ("***BCSC Decision***").

[4] TWU Community Covenant Agreement ("**Covenant**") [Appellant's Record ("**AR**"), **Vol III, at 405**].

[5] Affidavit #1 of Dr. W. Robert Wood ("**Wood #1**") at para 51 [**AR, Vol III, at 387**]; TWU's Statement of Faith [**AR, Vol III, at 399-400**].

[6] Wood #1, *supra* at para 51 [**AR, Vol III, at 387-388**].

[7] Affidavit #1 of Dr. Samuel Reimer, at paras 24, 42-44 [**AR, Vol II, at 243-4, 247-8**]. See also Affidavit #1 of Dr. Jeffrey Greenman, at paras 33-34, 50-52 [**AR, Vol II, at 227, 233-4**].

38. However, as a condition of admission and enrollment, TWU does require adherence to certain evangelical Christian behavioural norms as set out in its Community Covenant Agreement (the "**Covenant**"). Students of TWU's proposed law school would be "annually required to read, understand and pledge to the terms of the Community Covenant Agreement prior to registering for classes".[8]

39. The terms of the Covenant itself are not immutable,[9] but rather represent the current expression of how, and to what extent, TWU believes the evangelical faith should be enforced by the institution. As such, the Covenant is periodically reviewed and amended, based on consultation with staff, faculty and students.[10]

40. The Covenant currently prohibits individuals from engaging in sexual intimacy outside of a marriage between a man and a woman.[11]

41. It also prohibits pre-marital sexual relationships generally, and limits reproductive choices, which has a disproportionately negative impact on women.[12]

42. As a result of the exclusionary impact of these aspects of the Covenant, the issue of whether law societies should approve TWU's proposed law school has divided benchers, courts, law societies, the legal profession, and the public generally.

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[8] TWU School of Law Proposal (January 13, 2014) [**AR, Vol IV, at 610**].

[9] While previous Covenants have prohibited *all* conduct TWU holds to be biblically condemned, the current Covenant only prohibits some of that conduct. Various practices that were previously prohibited by the Covenant, including dancing on campus, and smoking and drinking off-campus, are now permitted. *Cf.* the prior Covenant set out at *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31 ("***BC College of Teachers***") at para 10 with the current Covenant [**AR, Vol III, at 401-406**]. See also Robin Elliot & Michael Elliot, "Striking the Right Balance: Rethinking the Contest Between Freedom of Religion and Equality Rights in *Trinity Western University v. The Law Society of British Columbia*" (2017) UBC L Rev (forthcoming) at 11-13 [Appellant's Book of Authorities ("**ABoA**"), **Tab 13**].

[10] Wood #1, *supra* at para 70 [**AR, Vol III, at 393**]; *Trinity Western University v The Law Society of Upper Canada*, 2015 ONSC 4250 at para 17 ("***ONSC Decision***"). See also Affidavit #1 of Jesse Legaree, at paras 15-16 [**AR, Vol II, at 255**]; Affidavit #1 of Iain Cook, at paras 16-17 [**AR, Vol II, at 209**].

[11] Covenant, *supra* [**AR, Vol III, at 402-403**].

[12] With respect to the latter restriction, see the provision in the Covenant requiring students to "treat all persons with respect and dignity, and uphold their God-given worth *from conception* to death" (emphasis added) [**AR, Vol III, at 402**]. And see *ONSC Decision*, *supra* at paras 104, 116.

C. BC Government's Deferral to the Law Society of BC

43. In order to grant a law school degree in British Columbia, TWU requires the approval of the British Columbia Minister of Education (the "**Minister**") under the *Degree Authorization Act*.[13] Among the considerations that the Minister will consider is whether the school obtains accreditation and recognition from relevant professional bodies like the Law Society.[14]

44. In June 2012, TWU submitted to the Minister a proposal for a new law school that would integrate "a Christian worldview into all courses".[15] The Minister submitted TWU's proposal to the Degree Quality Assessment Board ("**DQAB**"), which was reviewed by an expert panel of interim and former deans of the law faculties of the University of Alberta, Thompson Rivers, Queen's, UBC and Windsor (the "**Panel**").[16]

45. The Panel issued its report on April 17, 2013, and recommended approving TWU on various conditions, including that TWU remove the requirement that all faculty members sign and adhere to the Statement of Faith and Community Covenant.[17]

46. Two of the five members of the Panel, Professors Bernard Adell and Jeffrey Berryman, went further, and made the following comments:

> We would recommend that the proposal not be accepted unless potential law students as well as potential faculty members are exempted from being required to sign the university's Community Covenant as long as that document (by requiring abstention from "sexual intimacy that violates the sacredness of marriage between a man and a woman") discriminates against anyone who is in a same-sex relationship. (…)
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> If a religiously affiliated university had a religious basis for totally excluding black, Jewish or Muslim law students or faculty members, and did in fact say that it would

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[13] *Degree Authorization Act*, SBC 2002, c 24, ss. 3(2), 4.

[14] *Loke v. British Columbia (Minister of Advanced Education)*, 2015 BCSC 413 at para 11-12; And see Degree Program Review: Quality Assessment Report Workbook (April 17, 2013) ("**Expert Panel Report**") [**AR, Vol III, at 473-474**].

[15] TWU School of Law Proposal (January 13, 2014) [**AR, Vol IV, at 595-777, 609**]. And see *Trinity Western University v. The Law Society of British Columbia*, 2016 BCCA 423 at para 6 ("***BCCA Decision***").

[16] *BCCA Decision*, *supra* at para 9.

[17] Expert Panel Report, *supra* [**AR, Vol III, at 473, 484-488**].

> do so, we can only imagine that such discrimination would be widely seen as a critical obstacle to the establishment of a credible law school. And of course, it can no longer be argued either in fact or in law (if it ever could) that discrimination against homosexual relationships is not discrimination against homosexuals themselves. This was made clear very recently in *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11, at para. 123 (…)
>
> Compelling considerations of this sort led as perennially cautious and circumspect a newspaper as the Globe and Mail to say, in an editorial on February 8 of this year: "… a law school that purports to be a homosexual-free zone is a contradiction in terms… Equality before the law is at the heart of Canadian law, and a law school that won't accept that idea has no legitimacy."[18]

47. Before deciding whether to approve TWU's proposed JD program, the Minister waited for the decision of the Federation of Law Societies of Canada (the "**FLSC**").

48. In December 2013, an advisory committee established by the FLSC issued a report in which it found that there was no clear "public interest bar" to accrediting TWU as an approved institution for the purpose of issuing law degrees.[19] The FLSC then granted preliminary approval to TWU's proposed law school.[20]

49. A few days later, on December 17, 2013, the Minister granted consent to TWU to issue law degrees under the *Degree Authorization Act*.[21]

D. Consideration by the Law Society of British Columbia

50. Former Rule 2-27(4.1) (now Rule 2-54 (3)) of the BC Law Society Rules ("**Subrule 4.1**") provides that a law school is approved for the purposes of establishing adequate academic qualification if approval is granted by the FLSC under its national requirements, "unless

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[18] Expert Panel Report, *supra* [**AR, Vol III, at 483**].

[19] FLSC Special Advisory Committee on TWU's Proposed Law School: Final Report (December 2013), at paras 63-66 [**AR, Vol VI, at 1037-8**].

[20] FLSC Canadian Common Law Program Approval Committee: Report on TWU's Proposed School of Law Program (December 2013) [**AR, Vol VI, at 1077**]; *BCSC Decision*, *supra* at para 33; *BCCA Decision*, *supra* at paras 6-8.

[21] Ministry of Advanced Education, "Statement on Trinity Western University's proposed law degree" (December 18, 2013) [**AR, Vol VI, at 1106**]; Affidavit #1 of Cheryl McKinnon, Exhibit "C" [**AR, Vol V, at 1010-4**]; *BCSC Decision*, supra at paras 33-34.

the Benchers adopted a resolution declaring that it is not or has ceased to be an approved faculty of law."[22]

51. Between January and April of 2014, the Benchers of the Law Society considered whether to adopt a resolution under Subrule 4.1. The Benchers convened numerous meetings and solicited submissions from the membership of the Law Society, the public, and TWU regarding the TWU's proposed law school.[23]

52. On April 11, 2014, the Benchers first debated whether to adopt a resolution under Subrule 4.1 not approving TWU (the "**April Meeting**"). The submissions were also posted on the Law Society's website for consideration by TWU, the membership, and the public.[24]

53. At the April Meeting, the Benchers extensively canvassed and debated the various legal and policy considerations relating to the approval of TWU. The views of the Benchers ranged considerably, reflecting the significant controversy and division that TWU's proposed law school has generated.[25]

54. The Benchers then voted on a motion to declare the proposed TWU law school to not be an approved faculty of law under Subrule 4.1. That motion was defeated by a vote of 20-7.[26] As a result, TWU remained an approved institution as a result of the FLSC's preliminary approval.

55. A significant portion of the Law Society's membership was dissatisfied with the Benchers' April decision, and requisitioned a Special General Meeting of the Law Society ("**SGM**")

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[22] Law Society Rules (2014), Rule 2-27(4.1) [**ABoA Tab 8**]. And see *BCSC Decision*, *supra* at para 105.

[23] See Affidavit of Timothy E. McGee, Q.C. ("**McGee #2**") at paras 10-13 [**AR, Vol VI, at 1016-7**], and the Benchers' Minutes at Exhibits "G", "H", "I" [**Vol VI, at 1107-1118, and Vol VII, at 1119-1137**].

[24] McGee #2, *supra* at paras 12-13 [**AR, Vol VI, at 1017]** Benchers' Minutes (February 28, 2014) [**AR, Vol VII, at 1127-1129**].

[25] Transcript of Benchers' April Meeting (April 11, 2014) [**AR, Vol VII, at 1138-1189**].

[26] Benchers' Minutes (April 11, 2014) [**AR, Vol VII, at 1137**]; *BCSC Decision*, *supra* at para 37.

to direct the Benchers to invoke Subrule 4.1 to not approve TWU's proposed law school (the "**SGM Resolution**").[27]

56. If accompanied by a petition signed by 5% of the membership, the passage of the SGM Resolution would trigger the procedure in s. 13 of the *LPA*, which culminates in a referendum if the Benchers do not adopt the membership's resolution within a year.[28]

57. The SGM was held on June 10, 2014, and the SGM Resolution passed by a vote of 3,210 to 968.[29]

58. The Benchers considered the SGM Resolution and the issues stemming from it at their July 11, 2014 meeting. No decision regarding the SGM Resolution was made by the Benchers at that time. However, three motions were proposed, to be considered at a later meeting.

59. The first motion was to follow the recommendations of the membership at the SGM and pass a resolution to not approve TWU. The second motion was to hold a referendum of the membership. And the third motion was to reserve judgment until the decisions of other law societies to not approve TWU's proposed law school had been tested in court.[30]

60. The Benchers sought and received submissions from TWU regarding the implications of the SGM vote,[31] and continued to receive submissions from the membership and the public throughout this process with respect to TWU's proposed law school.

61. Some of the submissions from the public and membership supported TWU, while others urged the Law Society to not approve TWU's proposed law school. The submissions opposed to approval reflected a range of considerations and arguments, including that the

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[27] Notice to the Profession regarding the Special General Meeting (May 2014) [**AR, Vol VII, at 1190-4**]; *BCSC Decision*, *supra* at para 40.

[28] *Legal Profession Act*, SBC 1998, c 9, s. 13 (the "***LPA***" or the "***Act***").

[29] McGee #2, *supra* at para 15 and Benchers' Minutes (July 11, 2014) [**AR, Vol VI, at 1017, 1245**].

[30] Benchers' Minutes (July 11, 2014) [**AR, Vol VI, at 1245-8**].

[31] Affidavit of Earl Phillips, at paras 39-40 [**AR, Vol IV, at 591**].

Covenant discriminates against LGBTQ persons and limits reproductive rights of women, thereby depriving both groups of equal access to the legal profession.[32]

62. The Benchers met again on September 26, 2014 (the "**September Meeting**"). The discussions at the September Meeting canvassed the Law Society's statutory mandate, the legal and practical implications of the SGM vote and of holding a further referendum of the membership, considerations relating to the public interest in the administration of justice, the balancing of *Charter* rights, the impact of the Supreme Court's decision in *BC College of Teachers*, and other matters pertaining to the proposed resolutions.[33]

63. By a vote of 20 to 10, the Benchers adopted the second motion to direct a membership-wide referendum on whether the Benchers should adopt the SGM Resolution.[34]

64. The referendum results pertaining to the separate SGM Resolution were announced on October 30, 2014. A total of 5,951 BC lawyers (74%) voted in favour of and 2,088 (26%) against the resolution declaring that the proposed law school at TWU is not an approved faculty of law for the purpose of the Law Society's admission program.[35]

65. On October 31, 2014, the Benchers reviewed the results of the referendum, and adopted a resolution under Subrule 4.1 that the proposed TWU law school is not an approved faculty of law for the purposes of admission to the BC Bar (the "**Resolution**"). The Resolution was adopted with 25 votes for, one vote against, and four abstentions.[36]

E. The Minister's Response to the Resolution

66. On December 11, 2014, the then-Minister of Advanced Education announced that he was revoking his approval of the proposed law school at TWU under the *Degree Authorization*

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[32] Selected Submissions to the Law Society of B.C. [**AR, Vol VIII, at 1320-1388**].

[33] Transcript of Benchers' September Meeting (September 26, 2014) [**AR, Vol III, at 261-376**].

[34] Benchers' Minutes (September 26, 2014) [**AR, Vol VII, at 1266**]; *BCSC Decision*, *supra* at paras 43-45.

[35] McGee #2, *supra* at paras 19-20 [**AR, Vol VI, at 1017-8**] and Benchers' Minutes (October 31, 2014) [**AR, Vol VII, at 1277-8**].

[36] Benchers' Minutes (October 31, 2014) [**AR, Vol VII, at 1278**].

Act,[37] because the non-accreditation by the Law Society constituted a "substantive change" in the status of TWU's proposed law school for the purposes of Ministerial approval.[38]

F. Lower Court Decisions

67. TWU did not challenge the Minister's decision to revoke approval for TWU's proposed law school; rather, it sought judicial review of the Law Society's Resolution.

68. At first instance, Chief Justice Hinkson ruled that the Benchers had the statutory power not to approve TWU's proposed law school, but that the Benchers unlawfully subdelegated and fettered the exercise of their statutory powers by basing their decision on the results of the referendum, and that TWU was denied procedural fairness.[39]

69. Both parties recognized that a decision on the issue of whether the Resolution represented a proper balancing of the competing *Charter* rights was required, and, therefore, asked the Court of Appeal to address this issue on appeal.

70. The Court of Appeal held that the Benchers did not sub-delegate their authority to pass a resolution; that the Chief Justice had misapprehended the evidence in finding that there was a breach of procedural fairness; and that it would assume (without deciding) that the Law Society could determine such matters through a binding referendum, and that any issue of fettering would go to the amount of deference to be afforded to the decision.[40]

71. As a result of these findings, the Court of Appeal held that "the judge's decision to quash the Benchers' resolution cannot be reached on the administrative law issues alone". Rather, it had to address the substantive issue, which, as described by the Court, was whether the Resolution "represented the only reasonable balancing of statutory objectives with *Charter* values".[41]

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[37] See Ministry of Advanced Education, "Statement on Trinity Western University's school of law" (December 11, 2014) [**AR, Vol VII, at 1286**].

[38] Letter from Minister of Advanced Education to TWU (December 11, 2014) [**AR, Vol III, at 579-582**].

[39] *BCSC Decision*, *supra* at paras 108, 120, 125.

[40] *BCCA Decision*, *supra* at paras 62-64, 67-77, 92-95.

[41] *BCCA Decision*, *supra* at para 97.

72. The Court of Appeal held that it did not. In reaching this conclusion, the Court found that not approving TWU on the basis of its discriminatory admissions policy would have a "severe" impact on religious freedom, while the impact on the equality rights of LGBTQ persons would be "minimal".[42]

73. As a result of these conclusions on the respective strength of the *Charter* claims at issue, the Court found that "there can be only one answer to the question" before it: that the Law Society (and, presumably, the Minister) had to approve TWU's proposed law school.

PART 2 – ERRORS IN JUDGMENT

74. The Court of Appeal erred in holding that the Resolution did not represent the proper balance of the relevant *Charter* rights and values with the Law Society's statutory mandate.

PART 3 – ARGUMENT

A. Standard of Review

75. The rationale for applying a correctness standard of review is not that there is only one reasonable outcome, but that some issues demand a single answer from the courts in light of their importance and the need to achieve consistency across the legal system.

76. *Dunsmuir* sets out certain categories of questions that must be decided correctly, including constitutional questions, which are "necessarily subject to correctness review because of the unique role of s. 96 courts as interpreters of the *Constitution*".[43]

77. In *McLean*, the Court explained why issues of central importance to the legal system require a single answer to be provided by the courts:

> [27] The logic underlying the "general question" exception is simple. As Bastarache and LeBel JJ. explained in *Dunsmuir*, "[b]ecause of their impact on the administration of justice as a whole, such questions require uniform and consistent answers" (para. 60). Or, as LeBel and Cromwell JJ. put it in *Mowat* [2011 SCC 53],

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[42] *BCCA Decision*, *supra* at paras 168, 191.

[43] *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para 58.

> correctness review for such questions "safeguard[s] a basic consistency in the fundamental legal order of our country" (para. 22).[44]

78. Similarly, in *Saguenay*, the Court held that a correctness standard applied to "the question of law concerning the scope of the state's duty of neutrality that flows from freedom of conscience and religion", given "the importance of this question to the legal system, its broad and general scope and the need to decide it in a uniform and consistent manner".[45]

79. In short, the need for a single, correct outcome stems not from the absence of reasonable disagreement, but from the need for a decisive answer from the courts to questions of broad legal significance, and the importance of promoting rule of law values like certainty and consistency within that system.

80. In the Law Society of BC's respectful submission, the question of whether TWU should be approved by law societies is an issue that requires a single, conclusive answer from this Court, for the following reasons.

81. First, when it comes to a tension between constitutional rights, as in this case, providing a single answer is necessary to promote certainty and consistency regarding the proper delineation and definition of *Charter* rights.

82. That is particularly important in this case because, unlike in *Loyola* or *Doré*,[46] the Law Society has to achieve a balance between two *Charter* rights pulling in opposite directions. The broader the scope given to one *Charter* right, the narrower the scope of the other.[47]

83. Second, deciding which result strikes the proper balance will ensure that a person's *Charter* rights do not depend on the jurisdiction in which they happen to reside. There should be one answer across the country as to how the *Charter* rights should be defined in this context, and as the national guardian of the constitution, only this Court can provide it.

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[44] *McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at para 27 (emphasis added).

[45] *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16 at para 51 ("***Saguenay***").

[46] *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12 ("***Loyola***"); *Doré v. Barreau du Québec*, 2012 SCC 12 ("***Doré***").

[47] *BC College of Teachers*, *supra* at para 29.

84. It would create significant practical problems if law societies across the country had different rules governing the entry to their respective bars for TWU law school graduates. As in *Saguenay*, this is the type of question where "the need to decide it in a uniform and consistent manner" across the country is "undeniable".

85. And the BC Government is looking to the Law Society of BC – and ultimately to this Court – for guidance on whether TWU's proposed law school should be accredited.

86. A decision that either conclusion is reasonable does not provide the guidance the BC Government and the law societies need with respect to the proper balancing of *Charter* rights in the context of legal education.

87. Third, the decision-making context does not lend itself to a reasonableness analysis, which depends on justification, transparency and intelligibility within the reasoning process. This analysis cannot be meaningfully conducted in the absence of a single set of reasons that this Court can scrutinize for 'reasonableness'.

88. Unlike in a tribunal setting, as was the situation in *Doré*, the Benchers were not required to provide formal reasons for the Resolution; it was "more akin to the decisions reached by elected bodies such as Parliament, Provincial Legislatures and municipal councils".[48]

89. Therefore, as with the constitutionality of legislation, the Court can only meaningfully scrutinize the "outcome" of the decision, and determine whether this outcome complies with the statutory and constitutional obligations of the Law Society of BC.

90. For these reasons, the Law Society of BC respectfully submits that the question in this appeal is whether the Resolution strikes the right balance in this context.

B. *BC College of Teachers* Does Not Dictate the Outcome of the Balancing Analysis

91. It was not initially clear to the Law Society of BC whether the previous TWU case conclusively determined the issue of whether TWU's proposed law school should be approved.

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[48] *ONSC Decision*, *supra* at para 45.

92. However, the courts that have considered this issue have unanimously ruled that while the previous TWU case provides guidance, it is not dispositive of the proper balance in this case.[49] That is because it "involved different facts, a different statutory regime, and a fundamentally different question".[50]

93. The basis for the Resolution of the Law Society of BC is different than the basis of the decision of the *BC College of Teachers*.

94. Specifically, it is not contended by the Law Society of BC, as it was by the College of Teachers with respect to the educational graduates of TWU, that TWU's law graduates would be unqualified or would be necessarily inclined to discriminate in practice.

95. Rather, the concerns behind the adoption of the Resolution were the harmful impact on LGBTQ people and a diminution of public confidence in the evenhandedness of the justice system if the Law Society were to approve of discriminatory barriers to entry into the legal profession.[51]

96. As this Court has recognized, the context in which competing rights are being reconciled or balanced with the statutory objective is of crucial importance.[52]

97. In the case at hand, the context is the justice system, which performs an essential role in a constitutional democracy, and the Law Society's statutory obligation to protect the public interest and confidence in the administration of justice.

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[49] See *ONSC Decision*, *supra* at paras 59-72; *Trinity Western University v. The Law Society of Upper Canada*, 2016 ONCA 518 ("***ONCA Decision***") at paras 54-59; *BCCA Decision*, *supra* at paras 148-162; *Trinity Western University v. Nova Scotia Barristers' Society*, 2015 NSSC 25 ("***NSSC Decision***") at paras 138, 194, 208, 209.

[50] *ONSC Decision*., *supra* at para 60.

[51] See e.g. Richard Moon, "The Accreditation of Trinity Western University's Law School" *CBA - Law Matters* (Summer 2015) at 26-28 [**Moon, "Accreditation"**] [**ABoA Tab 18**], in which the author argues that the *BC College of Teachers* case was wrongly decided.

[52] On the importance of context in the delineation and balancing of *Charter* rights see *Reference re Same-Sex Marriage*, 2004 SCC 79 at para 50 ("***Reference re Same-Sex Marriage***"); *R. v. N.S.*, 2012 SCC 72 at paras 47-56 ("***R. v. N.S.***"). And see *Loyola*, *supra* at paras 39-43.

98. This is a much different context than the *BC College of Teachers* case, and hence a different analysis is required.

C. The Statutory Obligations of the Law Society

99. Like many other law societies across the country, the Law Society of BC has a statutory obligation to maintain the integrity of, and public confidence in, the administration of justice. This flows from section 3 of the *LPA*, which states:

> 3. It is the object and duty of the society to uphold and protect the public interest in the administration of justice by
>
> (a) preserving and protecting the rights and freedoms of all persons,
>
> (b) ensuring the independence, integrity, honour and competence of lawyers,
>
> (c) establishing standards and programs for education, professional responsibility and competence of lawyers and of applicants for call and admission,
>
> (d) regulating the practice of law, and
>
> (e) supporting and assisting lawyers, articled students and lawyer of other jurisdiction who are permitted to practice law in British Columbia in fulfilling their duties in the practice of law.

100. As can be seen, the Law Society of BC has a broad public interest mandate that goes well beyond ensuring the competency and fitness of lawyers for admission to the Law Society.[53]

101. As the gateway to the profession, law schools are a central pillar of the legal system, and therefore have an important obligation to ensure equality of opportunity in accessing the legal profession.[54]

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[53] As both courts below have held: see *BCSC Decision*, *supra* at para 108; *BCCA Decision*, *supra* at paras 52-59. See also *ONSC Decision*, *supra* at paras 52-58 and *ONCA Decision*, *supra* at paras 104-110.

[54] Brian Dickson, "Legal Education", (1986) 64 Can Bar Rev 374 at 377; Moon, "Accreditation", *supra* at 26, 28 [**ABoA Tab 18**]. See also *Grutter v. Bollinger*, 539 U.S. 306 (2002) at 332 ("***Grutter v. Bollinger***") [**ABoA, Tab 5**].

102. It is of crucial importance to the administration of justice that, as a matter of principle, everyone has an *equal* opportunity to attend law schools, to become not only members of the legal profession, but also by extension members of the judiciary.[55]

103. The Resolution is based on the recognition that there are certain institutions in society where equality of access and opportunity must be promoted to the greatest possible extent, and the legal system is one of them.[56]

104. Indeed, there is a growing recognition that law societies in Canada must take a proactive approach to increasing diversity in the profession and on the bench in order to protect and promote the public interest in the administration of justice.

105. As stated by Professor Thornhill in an article entitled "Ethics in the Legal Profession: The Issue of Access":

> Our profession is being forced to confront new realities. The patent injustice of discriminatory practices and systemic barriers are impossible to ignore. We in the profession know and are increasingly being made aware of the prevailing inequities. For example, we are being forced to confront the conspicuous dearth of "visible minorities" in the profession at all levels. We are being forced to acknowledge the absence of excluded or marginalized voices from the construction and articulation of legal doctrine, theory and discourse. We are being forced to critically examine and reassess the paradigms, perspectives and values that underpin our current legal constructs and assumptions. We are being forced to understand that the legal profession must now re-define itself along more inclusive, participatory and democratic lines that are not exclusively Eurocentric, male and white, but also embrace a multiplicity and diversity of experiences – themselves configured and socially constructed by factors of "race, colour, sexual orientation, disability, gender, ethnicity…. We are being forced to acknowledge and address racism and other tangible inequities that exist right now in our society as well as our institutions. We are being forced to be accountable for the authority and actions designed to end such discrimination and redress such inequalities.[57]

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[55] On the importance of diversity on the bench, see e.g. Sonia Lawrence, "Reflection: On Judicial Diversity and Judicial Independence" in Dodek& Sossin, eds, *Judicial Independence in Context* (Irwin Law: Toronto, 2010) [**ABoA, Tab 15**].

[56] This flows from a contextual approach to equality rights, explained in *Withler v. Canada (Attorney General)*, 2011 SCC 12 at paras 37-54.

[57] Esmeralda MA Thornhill, "Ethics in the Legal Profession: The Issue of Access" (1995) 33 Alta L Rev 810 at 812-813 [**ABoA Tab 19**]. See also Lizzie Barmes & Kate Malleson, "The Legal Profession as Gatekeepers to the Judiciary: Design Faults in Measures to Enhance Diversity" (2011) 74 Mod L Rev 25

106. This goal of ensuring diversity within the profession, and by extension within the judiciary, is obviously undermined if the regulator of the legal profession approves or otherwise facilitates discriminatory barriers to a legal education.

107. And if the Law Society approves of persons having unequal access to the legal profession, this will negatively impact public confidence in the legal profession and the integrity, credibility, and indeed democratic legitimacy, of our justice system,[58] because it would send a clear message that discriminatory barriers are permissible in this context.

108. However, these important considerations must still be balanced with the relevant *Charter* rights in the circumstances of this case. That requires a close analysis of the competing *Charter* rights in the situation at hand.

D. The *Charter* Interests Engaged

i. Equality Rights of LGBTQ persons and women

109. While TWU is not directly bound by the *Charter*, the Law Society is. The Law Society of BC must take into account the equality rights of persons who would be deprived of equal access to the legal profession through the approval of a proposed law school with discriminatory admissions and enrolment policies.

110. As a majority of this Court has recently held in the context of the freedom of religion claim in *Loyola*, "the state always has a legitimate interest in promoting and protecting" values such as diversity, human dignity and equality.[59]

[**ABoA Tab 9**]; J. Charlotte Ensminger, "Accessing Justice: The Legal Profession's Role in Serving the Public's Diverse Legal Needs" (2011) 44 UBC L Rev 71 [**ABoA Tab 14**].

[58] This point was made by the US Supreme Court in *Grutter v. Bollinger* in the context of ensuring racial equality in law schools, but in terms that apply more broadly: "Moreover, universities, and in particular, law schools, represent the training ground for a large number of our Nation's leaders. (…) In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training." *Grutter v. Bollinger*, *supra* at 332-333 (emphasis added) [**ABoA Tab 5**].

[59] *Loyola*, *supra* at paras 47-48 (emphasis added). See also *ONSC Decision*, *supra* at paras 116-118.

111. TWU's admissions policies effectively deprive LGBTQ individuals of an equal opportunity to attend law school, and therefore deprives them of equal access to the legal profession and the judiciary.[60]

112. Regardless of whether 60 additional law school places is considered significant in terms of access to a legal education in British Columbia, in terms of access across Canada, or in terms of access around the world, it cannot be denied that if TWU were approved, LGBTQ persons would have fewer opportunities available to them to obtain a legal education when compared with the opportunities available to heterosexual people.

113. However, even more importantly, the approval by the regulator of the legal profession of TWU's discriminatory admissions policy would also have a significant impact on the human dignity of members of the LGBTQ community generally.

114. In *Law*, this Court described the concept of human dignity in the following terms:

> As noted by Lamer C.J. in *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519, at p. 554, the equality guarantee in s. 15(1) is concerned with the realization of personal autonomy and self-determination. Human dignity means that an individual or group feels self-respect and self-worth. It is concerned with physical and psychological integrity and empowerment. … Human dignity is harmed when individuals and groups are marginalized, ignored, or devalued, and is enhanced when laws recognize the full place of all individuals and groups within Canadian society.[61]

115. There can be no question that the formal approval by the Law Society of a school with a discriminatory admissions policy, which requires LGBTQ persons to bury an essential part of their identity as a condition of admission, would significantly impact their human dignity as defined by this Court in *Law*.

116. That is because, as the Ontario Divisional Court explained, the Covenant is "by its very nature, discriminatory".[62]

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[60] Moon, "Accreditation", *supra* at 28-30 [**ABoA Tab 18**].

[61] *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497 at para 53.

[62] *ONSC Decision*, *supra* at paras 108, 111-112.

117. Facilitating or approving this kind of discrimination on the basis of protected characteristics like sexual orientation represents a serious incursion upon autonomy and personhood,[63] undermining the interests that the *Charter*'s substantive equality guarantee was designed to protect.

118. The fact that TWU is a private university does not mean that public bodies like the Law Society of BC should, or legally can, ignore discriminatory practices that harm the rights of others or undermine the public interest.

119. As this Court held in *Vriend v. Alberta*,[64] the failure of state actors to combat discrimination imposed by private parties can undermine substantive equality, both in terms of direct practical harms to persons discriminated against, and in terms of the harm to the human dignity of the affected groups caused by the state actors sending a message that this form of discrimination is accepted, condoned, or even encouraged.

120. In terms of the practical impact, the Court in *Vriend* noted that permitting discrimination imposed by private parties can perpetuate and encourage discrimination,[65] and excludes LGBTQ persons from important benefits that all others freely enjoy:

> [98] It may at first be difficult to recognize the significance of being excluded from the protection of human rights legislation. However it imposes a heavy and disabling burden on those excluded. In *Romer v. Evans*, 116 S.Ct. 1620 (1996), the U.S. Supreme Court observed, at p. 1627:
>
> > . . . the [exclusion] imposes a special disability upon those persons alone. Homosexuals are forbidden the safeguards that others enjoy or may seek without constraint. . . . These are protections taken for granted by most people either because they already have them or do not need them; these are protections against exclusion from an almost limitless number of transactions and endeavors that constitute ordinary civic life in a free society.

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[63] *BCCA Decision*, *supra* at 108-110. See also Affidavit #1 of Barry Adam [**AR, Vol IV, at 782-823**]; Affidavit #1 of Ellen Faulkner [**AR, Vol V, at 824-899**]; Affidavit #1 of Catherine Taylor [**AR, Vol V, at 900-924**]; Affidavit #1 of Elise Chenier [**AR, Vol V, at 925-953**]; Affidavit #1 of Mary Bryson [**AR, Vol V, at 926-1005**].

[64] *Vriend v. Alberta*, [1998] 1 SCR 493 ("***Vriend***").

[65] *Vriend*, *supra* at paras 97-99.

> While that case concerned an explicit exclusion and prohibition of protection from discrimination, the effect produced by the legislation in this case is similar. The denial by legislative omission of protection to individuals who may well be in need of it is just as serious and the consequences just as grave as that resulting from explicit exclusion.

121. In this case, the practical harm experienced by LGBTQ persons and women is the denial of equal access to a legal education in the province, and therefore unequal access to the considerable personal, professional, and societal advantages that come with a law degree.

122. However, as the Court in *Vriend* recognized, this practical impact is not the only, or even the most significant, harm caused by public bodies approving of or permitting discrimination by private parties.

123. That is because the failure to protect certain groups, like LGBTQ persons, from discrimination also has a significant impact on the human dignity of all members of the excluded community, by sending "a strong and sinister message" that "discrimination on the ground of sexual orientation is not as serious or as deserving of condemnation as other forms of discrimination".[66] As the Court in *Vriend* elaborated:

> [102] Perhaps most important is the psychological harm which may ensue from this state of affairs. Fear of discrimination will logically lead to concealment of true identity and this must be harmful to personal confidence and self‑esteem. Compounding that effect is the implicit message conveyed by the exclusion, that gays and lesbians, unlike other individuals, are not worthy of protection. This is clearly an example of a distinction which demeans the individual and strengthens and perpetrates the view that gays and lesbians are less worthy of protection as individuals in Canada's society. The potential harm to the dignity and perceived worth of gay and lesbian individuals constitutes a particularly cruel form of discrimination.[67]

124. The negative effect and consequences of this message are even more pronounced when, as is sought here by TWU, the discrimination in question is approved by the regulator of the legal profession, who has a statutory duty to protect the public interest in the administration of justice.

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[66] *Vriend*, *supra* at paras 99-101.

[67] *Vriend*, *supra* at para 102 (emphasis added).

125. This is not, as the B.C. Court of Appeal seemed to think, akin to the state giving regulatory approval to a religious group seeking to establish a care home or register a charity;[68] here, the Law Society of BC has an express statutory mandate to protect the credibility and legitimacy of an essential part of our democratic system: the administration of justice.

126. Ensuring equality of opportunity to participate in the legal profession in this context is essential to maintaining public confidence in the administration of justice.

127. The BC Court of Appeal failed to fully appreciate the substantive equality and dignity interests that would be undermined by approval of TWU's proposed law school, and hence the harmful impact such approval would have on the public interest in the administration of justice.

128. It held that the impact on the equality interest of LGBTQ persons was "minimal", because, according to the Court, most LGBTQ persons would not want to attend TWU even in the absence of the Covenant, and because approving TWU would not *decrease* the overall number of law school spaces available to LGBTQ students.

129. Indeed, the Court speculated that approving TWU notwithstanding its discriminatory admissions policy might even constitute a *benefit* to LGBTQ applicants, as it would open up more spaces in other law schools that did not discriminate against them.[69]

130. With respect, this reasoning profoundly misunderstands the substantive equality guarantee as contained in human rights codes and the *Charter*.

131. On the Court of Appeal's logic, a law school's discriminatory admissions policy would have a minimal effect on equality interests as long as the educational environment is sufficiently unwelcoming to those same excluded students for other reasons as well.

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[68] *BCCA Decision*, *supra* at para 184.

[69] See *BCCA Decision*, *supra* at para 174, quoting from the FLSC report with approval: "It is also clear that approval of the TWU law school would not result in any fewer choices for LGBT students than they have currently. Indeed, an overall increase in law school places in Canada seems certain to expand the choices for all students." (emphasis added)

132. Likewise, the harm caused by a law school that excluded, for instance, aboriginal students, would be "minimal" as long as the law school did not represent a large proportion of overall law school seats in Canada.

133. And approving a law school which banned evangelical Christians or Muslims would actually *benefit* those persons of faith, by freeing up more law school spaces in other schools that did not discriminate against them.

134. With the greatest of respect, the Court of Appeal's reasoning on this point is anathema to a meaningful conception of substantive equality.

135. For instance, in *Andrews v. British Columbia*,[70] this Court did not diminish Mr. Andrews' equality rights on the basis that there were other Canadian law societies available that would not exclude him.

136. And in *Meiorin*,[71] this Court did not minimize Ms. Meiorin's equality interests based on the assumption that, even without the discriminatory policy, few women wanted to be firefighters, anyway.

137. Similarly, this Court did not deprecate the equality interests of Mr. Vriend on the basis that vindicating those interests could in fact *reduce* the number of teacher positions overall, because schools like Kings College might choose not to operate at all rather than permit the hiring of persons with a sexual orientation of which they disapproved.

138. And in *O'Malley*,[72] this Court did not tell Ms. O'Malley that if she was unable to work on Saturdays because of her sincere religious beliefs, she was free to seek employment elsewhere, where working on the Sabbath was not required.

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[70] *Andrews v. Law Society of British Columbia*, [1989] 1 SCR 143 ("***Andrews***") at 201, Laforest J (noting that some provincial law societies simply require a declaration of an intention to become a citizen).

[71] *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 SCR 3.

[72] *Ont. Human Rights Comm. v. Simpsons-Sears*, [1985] 2 SCR 536 ("***O'Malley***").

139. In determining the impact on equality interests under the *Charter*, the issue is not and cannot be whether other non-discriminatory options remain available to the persons discriminated against,[73] or by a numerical calculation of the extent of the exclusion.

140. If that were so, a restaurant could refuse to serve Jewish persons as long as it could prove that there was a restaurant down the street that would, and public water fountains labelled "whites only" would be not be discriminatory as long as they are relatively few and some other water fountains were made available to all. This logic is self-evidently corrosive to the pursuit of substantive equality and, with respect, has no place in Canadian law.[74]

141. In summary, the harm to LGBTQ people from a discriminatory admission policy goes well beyond "[d]isagreement and discomfort with the views of others", as it was characterized by the BC Court of Appeal.

142. There is a marked difference between persons choosing not to attend a law school where religious viewpoints may be expressed with which they disagree, and being effectively told that they cannot attend that law school because of their sexual orientation.

143. As stated before, the former situation is a matter of choice; the latter goes to the very core of the their being, which is made even more serious because of the fact that they are being excluded, because of who they are as a person, from an integral part of the justice system.

ii. Impact on Religious Freedom

144. While the subjective views of members of TWU's religious community define the relevant religious beliefs, it is the Court's task to determine objectively whether, and to what extent, these beliefs have been infringed.[75]

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[73] *Lavoie v. Canada*, 2002 SCC 23 at para 5 (noting that the "fact that a person could avoid discrimination by modifying his or her behaviour does not negate the discriminatory effect").

[74] *Marriage Commissioners Appointed Under The Marriage Act (Re)*, 2011 SKCA 3 at paras 40-41 ("***Marriage Commissioners***"). See also *Egan v. Canada*, [1993] 3 FC 401 at paras 59-60, Linden JA, dissenting [**ABoA Tab 4**]. Linden JA's finding of discrimination under s. 15 was confirmed by a majority of the Supreme Court, although a differently constituted majority upheld the impugned law: *Egan v. Canada*, [1995] 2 SCR 513.

[75] *S.L. v. Commission scolaire des Chênes*, 2012 SCC 7 at paras 23-24 ("***S.L.***").

145. As stated by the Court in *Hutterian Brethren*:

> A preliminary observation is that the seriousness of the limit on freedom of religion varies from case to case, depending on "the nature of the right or freedom violated, the extent of the violation, and the degree to which the measures which impose the limit trench upon the integral principles of a free and democratic society". (…)
>
> The bare assertion by a claimant that a particular limit curtails his or her religious practice does not, without more, establish the seriousness of the limit for purposes of the proportionality analysis. Indeed to end the inquiry with such an assertion would cast an impossibly high burden of justification on the state. We must go further and evaluate the degree to which the limit actually impacts on the adherent.[76]

146. The Resolution only has an impact on the ability of TWU to prohibit sexual intimacy by its students outside of a marriage between a man and a woman. To that limited extent, the Resolution impacts the religious and associational freedom of TWU's community.

147. However, it is equally important to appreciate what religious interests are not impacted by the Resolution.

148. First, TWU's asserted religious interest is not in maintaining an institution composed exclusively of members of the evangelical Christian faith; it does not contend that attending school only with evangelical Christians is necessary to further its religious mission or sense of religious community.

149. Put differently, TWU does not assert a sincere religious belief that its religious adherents must be isolated from those who believe or act differently than they do. To the contrary, TWU's own evidence confirms that evangelical Christianity does not require isolation from those with different beliefs, values, or practices.[77]

150. And, as noted above, TWU allows its students, once admitted, to hold and express different beliefs, and to openly reject the religious beliefs of the TWU religious community.

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[76] See *Hutterian Brethren*, *supra* at paras 87, 90.

[77] See above, at paras 35-37 and corresponding citations; and see *ONSC Decision*, *supra* at paras 78-80.

151. Thus, TWU does not seek through its admission policy to create a space *inside* the law school where students can study law only with those who share their convictions; rather, it seeks to control the private sexual behaviour of LGBTQ students *outside* of the law school.

152. These considerations undermine the Court of Appeal's conclusion that a Covenant excluding persons in same-sex relationships is necessary to create a "space in which to exercise their religious freedom". [78]

153. Nor does the mere exposure to other beliefs, viewpoints or practices constitute a violation of religious freedom: as this Court held in *S.L.*, "such exposure can be a source of friction, it does not in itself constitute an infringement of s. 2(a) of the Canadian *Charter* and of s. 3 of the Quebec *Charter*".[79] This conclusion is even clearer in this case, as attendees of TWU would be adults, rather than children, and therefore there can be no reasonable claim that they would be unduly susceptible to influences contrary to their religious tenets.

154. Put simply, the Resolution does not negatively impact the freedom of any members of TWU's religious community to freely hold, practice and express their religious beliefs both generally and while attending any law school across the country, including at TWU.

155. The Resolution only impacts TWU's ability to prohibit private sexual conduct as a condition of admission to law school where doing so leads to the discriminatory exclusion of certain groups on the basis of protected grounds. It does not affect the ability to hold or express beliefs, but the ability to act on them to the detriment of others.[80]

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[78] *BCCA Decision*, *supra* at para 178. On this point, see e.g. *ONSC Decision*, *supra* at para 117 ("It remains the fact that TWU can hold and promote its beliefs without acting in a manner that coerces others into forsaking their true beliefs in order to have an equal opportunity to a legal education.")

[79] See *S.L.*, *supra* at para 40 and *Loyola*, *supra* at para 21.

[80] See *BC College of Teachers*, *supra* at paras 29-30, 36; *B.(R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315, at para 226, Iacobucci & Major, JJ; *Ross v. New Brunswick School District No. 15*, [1996] 1 SCR 825 at para 72; *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 at 346 ***("Big M Drug Mart"***); *Bruker v. Marcovitz*, 2007 SCC 54 at paras 70-75. See also *Hall (Litigation gauradian of) v. Powers*, [2002] O.J. No. 1803 ("***Hall***") at para 27-28 [**ABoA Tab 6**]; *Marriage Commissioners*, *supra* at paras 93, 146-148.

156. There is no reasonable basis for assuming, as the Court of Appeal did, that admitting married LGBTQ students would necessarily undermine the religious nature of TWU, while permitting heterosexual atheists, Jews, Buddhists or Muslims would not.[81]

157. Or, as Bencher Matthews put the point during the Law Society of BC debates: "is it necessary for one to enjoy freedom of religion, to be concerned about what the person sitting next to them in torts class is doing within the confines of their intimate relationship?"[82]

158. Of course, some members of the evangelical Christian community may *prefer* to attend a law school or participate in other activities only with those who do not engage in same-sex activities outside of the law school, but as this Court stated in *Loyola*:

> As McLachlin J. noted in *Adler v. Ontario* [citation], "[a] multicultural multireligious society can only work… if people of all groups understand and tolerate each other": para. 212. Religious freedom must therefore be understood in the context of a secular, multicultural and democratic society with a strong interest in protecting dignity and diversity, promoting equality, and ensuring the vitality of a common belief in human rights."[83]

159. Indeed, the very reason TWU is seeking the Law Society's approval is so that its students can be members of the legal profession, which necessarily involves interacting regularly with persons who do not adhere to their religious behavioural norms.

160. Once in the legal profession, TWU's students will have colleagues, staff, and clients who have a sexual orientation of which their religion does not approve. Permitting the same interaction at law school is no different, given that TWU does not require students to hold its religious beliefs as a condition of admission.

161. Moreover, even assuming that a person's religious freedom could be impacted by the behaviour of others around them, it is important to emphasize again that TWU is not seeking to regulate conduct *inside* the classroom or at the law school. It is seeking to ensure

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[81] See *ONSC Decision*, *supra* at para 80.

[82] Transcript of Benchers' April Meeting (April 11, 2014) [**AR, Vol VII, at 1171**].

[83] *Loyola*, *supra* at para 27.

conformity with its religious views *outside* the classroom, in relation to conduct occurring in the privacy of person's homes and away from the view or knowledge of the members of TWU's religious community.

162. Seeking to control the private conduct of its students, who are not required to hold TWU's religious beliefs, is at the outer reaches of religious and associational freedom, as understood in light of the principles integral to a free, democratic, and multicultural society.

163. Second, it is important not to conflate TWU's sincere religious *beliefs* with the decision to enforce through the Covenant some of those religious beliefs relating to the private conduct of prospective students.

164. As noted above, TWU no longer prohibits in the Covenant all conduct that it considers biblically condemned. Rather, TWU chooses, in consultation with staff, students, and faculty, which forms of conduct inconsistent with the scripture should be prohibited by the Covenant at any given time, and in what context (e.g. only on campus, or both on and off campus).[84]

165. Therefore, the specific terms of the Covenant are not themselves dictated by a religious belief; rather, they represent a choice of how and to what extent TWU's sincere religious beliefs should be enforced by the institution at any given time.

166. With that distinction in mind, it should be emphasized that, as this Court has consistently held, "although the freedom of belief may be broad, the freedom to act upon those beliefs is considerably narrower".[85]

167. The freedom to *believe* that sexual intimacy outside of a marriage between one man and one woman is wrong, and to choose to act in accordance with that belief, is not in any way impacted by the Resolution.

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[84] See above, at para 39, and corresponding citations.

[85] See above, footnote 80, and the cases cited therein. And see Richard Moon, "Religious Accommodation and its Limits: The Recent Controversy at York University" (2014) 23 Const Forum 9 at 12-13 [Moon, "Religious Accommodation"] [**ABoA Tab 17**].

168. Members of TWU's religious community can freely believe in, and live their lives in a manner consistent with, all aspects of the Covenant, including its proscription of same sex intimacy. They can do so individually, or commit to do so with others who share their faith, both within their law school community and outside of it.

169. Their religious and associational freedom does not depend on the ability to control the behaviour of their classmates in their private homes, particularly when they are not seeking to control the expression of different or contrary beliefs within their proposed law school.

170. Third, the Resolution does not impact any religious *practices*, for instance, prayers and basic sacraments,[86] theological instruction,[87] a decision to solemnize a marriage,[88] who to formally accept within a religious community,[89] or what religious practices, ceremonies, rites, or rituals to engage in.[90]

171. Those types of practices are not only outside the jurisdiction of the Law Society, but typically occur in the private religious sphere where state neutrality is possible, in contrast with the public sphere, where important public interests like protecting the equality and human dignity interests of persons affected by religiously motivated conduct must play a significant role in public decision making.[91]

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[86] Referred to in *Hutterian Brethren*, *supra* at para 89.

[87] On this distinction, see Robert E Charney, "Should the Law Society of Upper Canada Give Its Blessing to Trinity Western University Law School?" (2015) 34 NJCL 173 at 185-187 [**ABoA Tab 10**].

[88] See e.g. *Reference re Same-Sex Marriage*, *supra* at paras 55-60; *Marriage Commissioners*, *supra.*

[89] See e.g. *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 SCR 165.

[90] See e.g. *Syndicat Northcrest v. Amselem*, 2004 SCC 47; *Multani v. Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6.

[91] See e.g. Richard Moon, "Freedom of Religion Under the *Charter of Rights*: The Limits of State Neutrality" (2012) 45 UBC L Rev 497 at 501, 549 [**ABoA Tab 16**]. Previous cases involving the provision of benefits or services made available to all members of the public have consistently found that the ability of religious persons to exclude others did not outweigh the rights of LGBTQ persons to participate in society free from discrimination. See e.g. *Marriage Commissioners*, *supra*; *Hall*, *supra* [**ABoA Tab 6**]*; Brockie v Ontario (Human Rights Commission)*, [2002] OJ No 2375 (QL) [**ABoA Tab 2**]; *Ontario Human Rights Commission v. Christian Horizons*, 2010 ONSC 2105; *Eadie and Thomas v. Riverbend Bed and Breakfast (No. 2)*, 2012 BCHRT 247.

172. The Resolution does not affect the ability of evangelical Christians to engage in all of the practices, and expound any religious beliefs, that they are committed to, while attending any law school in the country, including TWU. It only addresses TWU's rules that seek to control the ability of others to engage in sexual relationships outside of TWU's private religious sphere.

173. Fourth, the Resolution does not impact TWU's ability to teach law from a religious perspective. The Resolution was not based on TWU's educational program or proposed curriculum, but was solely concerned with imposing discriminatory barriers to entry.

174. This case is unlike *Loyola*, where the Minister attempted to interfere in the actual promulgation and dissemination of the Christian faith by stipulating how a Roman Catholic high school was to teach Catholicism. By contrast, the ability of TWU to teach from a religious perspective is not in any way engaged or limited by the Resolution.

175. In summary, TWU accepts that students can attend TWU without sharing the evangelical faith, and that enrolled students can engage in some conduct considered by evangelical Christians to be inconsistent with biblical commands, without negatively impacting TWU's ability to maintain a suitably Christian learning environment.

176. And it is clear that the Resolution does not impact the ability of members of TWU's religious community to hold, express, or practice their own religious beliefs, nor does it limit TWU's ability to teach law from an evangelical Christian perspective.

177. Therefore, TWU's claim is not about ensuring a space where each individual has the freedom to hold, express, and act according to, their religious beliefs, and where law is taught from an evangelical Christian perspective, which are not impacted by the Resolution.

178. Rather, the limited religious interest of the members of TWU's religious community is in ensuring that students are not engaging in certain private sexual relationships outside of the law school, even though they accept that the persons with whom they are learning law in the classroom may not share, and may even categorically reject, all of their religious beliefs, including their beliefs about sexual orientation.

179. The only thing TWU cannot do as a result of the Resolution is exclude persons from admission based solely on private conduct that is integral to those persons' identity, [92] and thereby effectively deprive them of equal access to law schools in the province on the basis of protected characteristics.

180. The Law Society respectfully submits that this is a limited intrusion on religious freedom.

E. The Proper Balance

181. The Resolution reinforces the promise of substantive equality, and confirms the right of members of every protected group to participate equally in Canadian society. It does this by protecting the equality rights of LGBTQ persons and others who would be negatively impacted by the Law Society's approval of an institution that promoted unequal access to law school, and therefore undermined the public interest in the administration of justice.

182. However, it is equally important to ensure that religious beliefs and practices be accommodated as much as possible within a justice system committed to the principles of substantive equality. The Law Society submits that the Resolution properly achieves this objective as well.

183. The first and most obvious way religious beliefs are accommodated in this context is to ensure that evangelical Christians are entitled to the same protections being afforded to LGBTQ persons through the Resolution, i.e., that no law school is permitted to exclude evangelical Christians or have admissions policies which discriminate against them.

184. There is little question that the Law Society would refuse to approve a school that sought to impose direct or indirect barriers upon evangelical Christians, for the exact same reason that it has refused to approve TWU's proposed law school – that it is discriminatory and therefore contrary to the Law Society's statutory mandate.

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[92] See *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11 at paras 123-124, adopting the reasons of L'Heureux-Dubé J. on this point, dissenting in *BC College of Teachers*, *supra*. See also *Christian Legal Society et al v. Martinez et al*, 561 U.S. 661 at 689 (2010) [**ABoA Tab 3**].

185. This commitment to equality ensures that evangelical Christians, like all other religious persons, can attend any law school in the province without having to sacrifice a single aspect of their religious beliefs. They can promote those beliefs on campus, and they can urge moral positions that accord with their religious beliefs in classroom discussions and extra-curricular activities.

186. The question is whether this even-handed commitment to equality and non-discrimination is insufficient to protect freedom of religion and freedom of association rights of evangelical Christians, given TWU's proposal to create a law school specifically dedicated to promoting the religious interests of evangelical Christians.

187. In addressing this issue, the Law Society has attempted to seek a balance or reconciliation of rights, instead of endorsing all-or-nothing propositions.[93]

188. For instance, some have contended that the Law Society should not approve any law school that promotes certain religious beliefs or teaches law from a religious perspective, because an institutional commitment to certain religious beliefs is incompatible with equality rights and offering a sufficiently robust legal education.[94]

189. But the Law Society has not taken that absolutist position; it has not said that TWU cannot teach from a religious perspective or that it cannot seek to promote its religious faith in the context of a law school.

190. That is because those manifestations of religious faith can be accommodated within a law school without causing a direct harm to others by creating discriminatory and unequal barriers to admission to the law school.

191. Clearly, attending a law school that teaches law from a particular religious perspective might not be every potential student's preferred approach, and some would feel 'unwelcome' merely as a result of TWU's religious commitments. Depending on their

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[93] On the importance of seeking to balance or reconcile competing *Charter* rights, see e.g. *BC College of Teachers*, *supra* at paras 28-29; *R. v. Crawford*, [1995] 1 S.C.R. 858 at paras 33-35; *Reference re Same-Sex Marriage*, *supra* at para 52; *R. v. N.S.*, *supra* at paras 32-33.

[94] See e.g. Elaine Craig, "The Case for the Federation of Law Societies Rejecting Trinity Western University's Proposed Law Degree Program" (2013) 25 Can J Women & Law 148 at 152 [**ABoA Tab 11**].

other options, people who would feel uncomfortable in that setting might choose not to attend TWU.

192. But the important point is that they would have a *meaningful choice* as to whether or not to attend TWU in light of its intention to teach law from an evangelical perspective, which is not the case if they are effectively required to choose between their sexual orientation and attending TWU's proposed law school, as certain aspects of the Covenant require.

193. And by approving a law school that teaches from an evangelical Christian perspective, the Law Society is not endorsing or facilitating discrimination within the legal system, which would be the case if the Law Society approved of a law school that effectively excluded persons because of their sexual orientation.

194. The Law Society has also not adopted the opposite absolutist approach in its Resolution, which would require approval of any law school as long as it could be shown that the discriminatory conduct was in some way motivated by or connected to a subjective religious belief, regardless of its harmful effect on protected groups and the public interest in the administration of justice.

195. That was the approach taken in the BC Court of Appeal's decision, which held, in effect, that because students excluded from TWU as a result of its Covenant could still go to other law schools, their equality rights would only be minimally impacted by the Law Society's approval of TWU.

196. By taking such an impoverished approach to the equality and dignity interests impacted in this case, the Court of Appeal's logic effectively gives absolute scope to subjective religious beliefs, because it can always be said that persons excluded from a proposed law school, for whatever religious reason, are not excluded from attending *other* law schools.

197. On this approach, the only limit to the harm that could be caused to the equality and dignity interests of others and to the public confidence in the administration of justice would be self-imposed, based on the subjective beliefs of the religious group and their decisions regarding how to put those beliefs into practice.

198. The BC Court of Appeal's logic would equally require the approval of a religious school that said everyone can attend their law school, but students cannot engage in relationships with anyone of a different race or ethnicity.

199. These concerns are not wholly conjectural. Enforcement of those religious beliefs led to *Loving v. Virginia*, decided 50 years ago this year, as well as *Bob Jones University* a decade and a half later.[95] The rationale for the anti-miscegenation laws and policies at issue in those cases was the sincere religious belief that God put the different races on separate continents in order to keep them apart.[96]

200. The Law Society submits that this case is no different in principle than one in which a proposed law school excluded persons based on a sincere religious belief that persons of different ethnicities should not be permitted to engage in sexual intimacy, or that excluded women on the basis of a sincere religious belief that men and women should not interact outside of the home;[97] the only difference is the particular religious belief at issue, which is entirely contingent on the purely subjective commitments of the community in question.

201. The absolutist positions on both sides of the *Charter* rights equation are properly rejected by the Law Society of BC in the context of TWU's proposed law school.

202. That is, the Law Society of BC has rejected an approach that would give absolute preference to equality rights over religious and associational freedom in the context of law

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[95] *Loving v. Virginia* , 388 U.S. 1 (1967) ("***Loving***") [**ABoA Tab 7**]; *Bob Jones University v. The United States*, 461 U.S. 574 (1983) ("***Bob Jones University***") [**ABoA Tab 1**].

[96] See *Loving*, *supra* at 3 [**ABoA Tab 7**]. The religious pretext for the anti-miscegenation admissions policy in *Bob Jones University* was apparently different, but to the same effect. See *Bob Jones University*, *supra* at 583, n 6 [**ABoA Tab 1**], referring to the specific belief of the other petitioner, Goldsboro Christian Schools ("Cultural or biological mixing of the races is regarded as a violation of God's command").

[97] See Moon, "Religious Accommodation", *supra* [ABoA Tab X]. And see Moon, "Accreditation", *supra* at 28-29 [**ABoA Tab 17**]: "TWU is asking for the right or privilege to operate an accredited law program (and to play a role in choosing who will be trained in law and ultimately join the legal profession). Yet, at the same time, it is claiming that the law society's refusal to accredit its law program amounts to an interference in its internal affairs. TWU's assertion has resonance only if we are ambivalent in our commitment to sexual orientation equality. For it seems plain that a law program would not be accredited, if it had a religiously-based admission rule that excluded women (or married women, or women with children) because the institution believed that a woman's role is to care for the children of her family and to provide support in the home for her husband." (emphasis added).

schools by refusing to approve any law school that sought to teach law from a religious perspective.

203. At the same time, it has also rejected an approach which would give absolute preference to religious and associational freedoms over equality rights, by approving any discriminatory treatment of others as long as it is connected to a subjective religious belief, and as long as other law schools remain available to the excluded group.

204. Instead, the Law Society of BC has drawn the line where this Court has consistently held it should be drawn: where religious beliefs are manifested in a manner that results in a demonstrable harm to others or the public interest; that is, where religious *beliefs* (in this case, the view that same-sex marriage is wrong) are converted into harmful *conduct* (in this case, depriving LGBTQ persons of equal access to the legal profession).[98]

205. As Chief Justice Dickson stated in *Big M Drug Mart*, religious freedom protects a person's liberty "to hold and to manifest whatever beliefs and opinions his or her conscience dictates, provided *inter alia* only that such manifestations do not injure his or her neighbours or their parallel rights to hold and manifest beliefs and opinions of their own".[99]

206. Similarly, this Court held in *BC College of Teachers* that the proper place to draw the line is between the holding and expression of religious *beliefs*, and engaging in discriminatory *conduct* based on or motivated by those beliefs.

207. Applying that principle in this case leads to the conclusion that the manifestation of TWU's religious beliefs through an exclusionary admissions policy constitutes harmful and discriminatory *conduct* that the Law Society was entitled, indeed required, to remedy.[100]

208. In this respect, it is useful to contrast this case with *Hutterian Brethren*, where the religious freedom was more clearly and directly infringed by the state conduct, and the state interest more attenuated, but nevertheless the restriction on religious freedom was upheld.

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[98] See above, footnote 80, and the cases cited therein.

[99] *Big M Drug Mart*, *supra* at 346 (emphasis added).

[100] *Loyola*, *supra* at paras 47-48 (emphasis added).

209. The claimants in *Hutterian Brethren* had a sincere religious belief that having their photo taken was *prohibited* by their religion.[101] But in this case, TWU does not assert a religious *obligation* to refrain from interacting with LGBTQ persons or with other persons who engage in conduct TWU considers biblically condemned.

210. And of course, the Resolution does not force any members of TWU's religious community to engage in conduct contrary to their sincere religious belief that same-sex intimacy or marriage is wrong. By contrast, the driver's license requirement in *Hutterian Brethren* that a photo be taken was directly contrary to the claimants' religious beliefs.

211. Second, the state interest in *Hutterian Brethren* did not involve the protection of the *Charter* rights of others, but "ensuring the integrity of the system for licensing drivers";[102] this case involves the more significant state interest of ensuring equality of access to a legal education, the legal profession, and the judiciary, and thereby maintaining the integrity of and public confidence in the administration of justice.

212. Finally, like the claimant group in *Hutterian Brethren*, TWU has taken an absolutist position: the "only acceptable measure" to TWU is "one that entirely removes the limit on their s. 2(a) rights".[103] However, in this case, providing absolute scope for religious freedom would not only undermine the Law Society of BC's statutory mandate, but would fail to achieve a balance or reconciliation between rights by allowing the *Charter* rights of some to completely trump the *Charter* rights of others.

213. Put simply, if it is permissible to force persons to choose between adhering to a religious obligation and having access to the broader world, in furtherance of maintaining the integrity of a drivers licencing system, it must be permissible to limit the ability of TWU to prohibit interactions with persons who engage in private conduct of which they disapprove, in furtherance of equal participation in the legal system and public confidence in the administration of justice.

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[101] *Hutterian Brethren*, *supra* at para 7.

[102] *Hutterian Brethren*, *supra* at para 41.

[103] *Hutterian Brethren*, *supra* at para 58.

214. That is particularly the case here, because the Resolution leaves a very large scope for the exercise of the religious and associational rights of TWU's religious community in the context of obtaining a legal education. To repeat:

a. evangelical Christian students have the freedom to attend any law school in Canada while practicing and professing their religion to the maximum extent;

b. evangelical Christians will also have access to a school that teaches law from their religious perspective, if it does so without imposing discriminatory barriers; and

c. TWU can enforce a mandatory Covenant based on its sincere religious beliefs to the extent that its provisions do not result in the exclusion of people on the basis of a protected characteristic.

215. In this way, both religious freedom and equality rights are meaningfully protected and reconciled with one another.

F. Conclusion

216. Benchers, lawyers, judges, and law societies across the country have divided on where the balance between religious freedom and substantive equality should be struck in this context, and it cannot be said that either position is self-evidently unreasonable.

217. However, the Law Society respectfully submits that this Court must provide a single, conclusive answer, and that on careful consideration, the balance struck by the Resolution is the most proportionate balancing of the competing *Charter* rights with the Law Society of BC's statutory obligations.

218. The Resolution is not aimed at, and does not interfere with, any individual's religious practices or the holding and expressing of religious beliefs.

219. And, as TWU does not seek to teach law only to students who share its religious beliefs, and does not have a sincere religious belief that evangelical Christians must be isolated from those who believe or act differently, the Resolution only has a minimal impact on the religious and associational rights of the members of TWU's religious community.

220. By way of contrast, TWU's attempt to control the sexual behaviour of its students outside of the classroom, through a requirement that students can only engage in sexual intimacy in a marriage between a man and a woman, has a significant impact on the equality rights of LGBTQ people and the inclusivity of the justice system, and therefore undermines the public interest in the administration of justice.

221. Again, this case does not involve purely private activities, religious rites, ceremonies or practices, or admission to just any educational environment; it involves admission to an educational institution that plays a central role in the administration of justice, where equal opportunity must be diligently guarded.

222. Thus, as the Resolution leaves considerable room for the exercise of religious beliefs and practices, and the promulgation of the Christian faith within a law school environment, the Law Society of BC respectfully submits that it has achieved the most proportionate balance of the competing *Charter* rights consistent with its statutory mandate.

223. Put another way, in this context, the balance struck by the Resolution was the appropriate place to draw the line in light of the important objectives the Law Society is required to promote. And because the Law Society struck a proportionate – indeed the proper and correct – balance on this difficult issue, its decision should be affirmed.

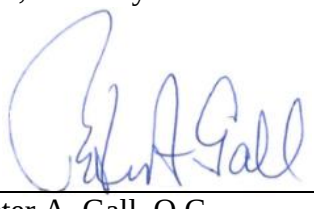
PARTS 4 – SUBMISSION ON COSTS

224. Costs should be in the cause.

PART 5 – NATURE OF ORDER SOUGHT

225. That the appeal be granted, and the Resolution of the Law Society restored.

Dated at the City of Vancouver, Province of British Columbia, this May 23rd of 2017.



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PART 6 – LIST OF AUTHORITIES

AUTHORITIES	PARAGRAPH #
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Grutter v. Bollinger, 539 US 306 (2002) [**ABoA Tab 5**]	101, 107
Hall (Litigation guardian of) v. Powers, [2002] OJ No 1803 (QL) [**ABoA Tab 6**]	155, 171, 204
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