Court of Appeal File No. C61116
Divisional Court File No. 250/14

IN THE COURT OF APPEAL FOR ONTARIO
(ON APPEAL FROM THE DIVISIONAL COURT)

BETWEEN:

TRINITY WESTERN UNIVERSITY & BRAYDEN VOLKENANT

Appellants

and

THE LAW SOCIETY OF UPPER CANADA

Respondent

and

CHRISTIAN LEGAL FELLOWSHIP, EVANGELICAL FELLOWSHIP CANADA AND CHRISTIAN HIGHER EDUCATION CANADA, JUSTICE CENTRE FOR CONSTITUTIONAL FREEDOMS, OUT ON BAY STREET AND OUTLAWS, THE ADVOCATES' SOCIETY, CRIMINAL LAWYERS' ASSOCIATION (ONTARIO), CANADIAN CIVIL LIBERTIES ASSOCIATION, LAWYERS' RIGHTS WATCH CANADA, CANADIAN SECULAR ALLIANCE, ASSOCIATION FOR REFORMED POLITICAL ACTION CANADA, THE SEVENTH DAY ADVENTIST CHURCH IN CANADA, CANADIAN CONSTITUTION FOUNDATION and CANADIAN BAR ASSOCIATION

Interveners

FACTUM OF THE INTERVENER CHRISTIAN LEGAL FELLOWSHIP

ROCHON GENOVA LLP
Barristers • Avocats
121 Richmond St. West, Suite 900
Toronto, ON M5H 2K1
Peter R. Jervis (LSUC# 22774A)
Tel: (416) 363-1867
Fax: (416) 363-0263

CHRISTIAN LEGAL FELLOWSHIP
470 Weber St. N., Suite 202
Waterloo, ON N2L 6J2
Derek B.M. Ross (LSUC#55093B)
John R. Sikkema (LSUC#67933W)
Tel: (519) 208-9200
Fax: (519) 208-3600

Lawyers for the Intervener
The Christian Legal Fellowship

TO: **BENNETT JONES LLP**
One First Canadian Place P.O. Box 130
Toronto, ON MSX 1A4

Robert W. Staley
Email: staleyr@bennettjones.com

Derek J. Bell
Email: belld@bennettjones.com

Ranjan K. Agarwal
Email: agarwalr@bennettjones.com

Telephone: (416) 863-1200
Facsimile: (416) 863-1716

Lawyers for the Applicants (Appellants) Trinity Western University and Brayden Volkenant

AND TO: **BORDEN LADNER GERVAIS LLP**
44th Floor- Scotia Plaza
40 King Street West
Toronto, ON MSH 3Y4

Guy J. Pratte
Email: gpratte@blg.com

Nadia Effendi
Email: neffendi@blg.com

Duncan Ault
Email: dault@blg.com

Tel: (416) 367-6728
Fax: (416) 361-2721

Lawyers for the Respondent, Law Society of Upper Canada

AND TO: **DOUCETTE SANTORO FURGIUELE**
1100-20 Dundas St. W.
Toronto, Ontario M5G 2G8

Daniel C. Santoro
Email: santoro@dbsflitigation.com

Telephone: (416) 922-7272
Facsimile: (416) 342-1766

Lawyers for the Intervener, Justice Centre for Constitutional Freedoms

AND TO: **VINCENT DAGENAIS GIBSON LLP/s.r.l.**
260 Dalhousie Street, Suite 400
Ottawa, ON KIN 7E4

Albertos Polizogopoulos
Email: albertos@vdg.ca

Kristin Marie Barsoum Debs
E-mail: kristin@debslaw.ca

Telephone: (613) 241-2701
Facsimile: (613) 241-2599

Lawyers for the Intervener, Evangelical Fellowship of Canada and Christian Higher Education Canada

AND TO: **PAUL JONATHAN SAGUIL**
66 Wellington Street W. Toronto, ON M5K 1A2

Paul Jonathan Saguil
Email: paul.jonathan.saguil@gmail.com

Telephone: (416) 308-1719

GOLDBLATT PARTNERS
20 Dundas Street West, Suite 1100
Toronto, ON M5G 2G8

Marlys A. Edwardh
Email: medwardh@goldblattpartners.com

Telephone: (416) 977-6070
Facsimile: (416) 591-7333

Lawyers for the Interveners Out on Bay Street and OUTlaws

AND TO: **MARTHA McCARTHY & CO LLP**
146 Davenport Road
Toronto, ON M5R 112

Joanna Radbord
Email: joanna@mccarthyco.ca

Telephone: (416) 238-7916
Facsimile: (416) 862-9001

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
Barristers and Solicitors
155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1

Chris G. Paliare
Email: chris.paliare@paliareroland.com

Telephone: (416) 646-4318
Facsimile: (416) 646-4301

Lawyers for the Intervener, The Advocates' Society

AND TO: **JOHN NORRIS**
Simcoe Chambers
116 Simcoe Street, Suite 100
Toronto, ON M5G 2G8

John Norris
Email: john.norris@simcoechambers.com

Telephone: (416) 596-2960
Facsimile: (416) 596-2598

BREESE DAVIES
Barristers & Solicitor
17 John Street, Suite 101
Toronto, ON M5T 1X3

Breese Davies
Email: bdavies@bdlaw.ca

Telephone: (416) 649-5061
Facsimile: (416) 352-7733

Lawyers for the Intervener, Criminal Lawyers' Association (Ontario)

AND TO: **ASSOCIATION FOR REFORMED POLITICAL ACTION CANADA**
Suite 2010-130 Albert Street
Ottawa, ON KIP 5G4

Andre Marshall Schutten
Email: Andre@ARPACanada.ca

Telephone: (613) 297-5171
Facsimile: (613) 249-3238

Lawyers for the Intervener, Association for Reformed Political Action Canada

AND TO: **STIKEMAN ELLIOTT LLP**
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Alan D'Silva
Email: adsilva@stikeman.com

Alexandra Urbanski
Email: aurbanski@stikeman.com

Telephone: (416) 869-5204
Facsimile: (416) 947-0866

Lawyers for the Intervener, Canadian Civil Liberties Association

AND TO: **FARRIS, VAUGHAN, WILLS & MURPHY LLP**
700 W Georgia St #25, Vancouver, BC V7Y 1B3

Tim Dickson
Email: tdickson@farris.com

Telephone: (604) 661-9341
Facsimile: (604) 661-9349

Lawyers for the Intervener, Canadian Secular Alliance

AND TO: **MAGRATH'S INTERNATIONAL LEGAL COUNSEL**
393 University Avenue
Suite 2000
Toronto, ON M5G 1E6

Gavin Magrath
Email: gavin@magraths.ca

Telephone: (416) 931-0463
Facsimile: 1-888-816-8861

Lawyers for the Intervener, Lawyers' Rights Watch Canada

AND TO: **URSEL PHILLIPS FELLOWS HOPKINSON LLP**
555 Richmond Street West, Suite 1200
Toronto, ON M5V 3B1

Susan Ursel
Email: sursel@upfhlaw.ca

Telephone: (416) 968-3333
Facsimile: (416) 968-0325

AMY SAKALAUSKAS
Barrister and Solicitor
1690 Hollis St., 8th Floor
PO Box 7, Stn. Central
Halifax, Nova Scotia B3J 2L6

Amy Sakalauskas
Email: amy.sakalauskas@outlook.com

Telephone: (902) 424-2956
Facsimile: (902) 424-7158

IRVING MITCHELL KALICHMAN LLP
3500 De Maisonneuve Boulevard West
Suite 1400
Montreal, Quebec H3Z 3C1

Audrey Doctor
Email: aboctor@imk.ca

Telephone: (514) 934-7737
Facsimile: (514) 935-2999

Lawyers for the Intervener, The Canadian Bar Association

AND TO: **MILLER THOMSON**
700- 9th Avenue S.W. Suite 3000
Calgary, AB T2P 3V4

Gerald Chipeur
Email: gchipeur@millerthomson.com

Telephone: (403) 298-2434
Facsimile: (403) 262-0007

Lawyers for the Intervener, The Seventh Day Adventist Church in Canada

AND TO: **SAM GOLDSTEIN**
318-100 Richmond Street West
Toronto, ON M5H 3K6
Tel: 416-927-1211

Sam Goldstein
Email: sam@samgoldstein.ca

Telephone: (416) 927-1211
Facsimile: (416) 862-7602

Lawyers for the Intervener, Canadian Constitution Foundation

PART I: OVERVIEW

1. Legal professionals, including the Christian law students and lawyers who form the Christian Legal Fellowship ("CLF"),[1] have the freedom to express and exercise their religious beliefs, and to freely associate with others who share those beliefs. This includes the right to attend an academically accredited religious law school[2] with members of their faith community, without consequential discrimination by the Law Society of Upper Canada ("LSUC") or other state actors on the basis of their religious beliefs and associations.[3] It also includes the right not to be deprived of the opportunity to obtain a professional licence.

2. As found by the Divisional Court, the LSUC's decision ("the Decision") not to accredit the proposed law school of Trinity Western University ("TWU") directly violates the *Charter*[4] rights of religious law students. The effect of the Decision, if it is not reversed, will be to allow state actors like the LSUC to impose burdens or deny benefits to members of religious institutions solely on the basis that they exercise their religious beliefs and values within their private religious associations. It would also undermine the role of religious minorities and their members in Canadian public life, and their inclusion in a diverse and pluralistic society. Such an outcome cannot be said to be in the "public interest."[5]

PART II: ISSUES TO BE ARGUED

3. The Christian Legal Fellowship will argue the following issues:

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[1] CLF's membership includes over 600 law students, professors, lawyers, and retired judges from over 30 Christian denominations: Affidavit of Robert Reynolds in support of Motion to Intervene, paras 3, 6 [Reynolds Affidavit].

[2] TWU's proposed law school has already been accredited by the Federation of Law Societies of Canada ("FLSC"): Convocation Transcript (Mr. Kuhn), April 24, 2014, Exhibit Book, vol 5, Tab 20, pages 2335-2336.

[3] Members of religious communities have a constitutional right to denominational education (*Constitution Act, 1867*, s. 93), and B.C. human rights legislation provides special accommodation for religious institutions and organizations, including educational institutions: *Trinity Western University v B.C. College of Teachers*, 2001 SCC 31, JBOA Tab 9, at para 34 [*TWU 2001*]. See also *Human Rights Code*, RSO 1990, c H.19, JBOA Tab 132, s. 18 [*Code*].

[4] *Canadian Charter of Rights and Freedoms*, Schedule B to the *Canada Act 1982*, 1982, c. 11 [*Charter*].

[5] The *Charter* and Ontario's *Human Rights Code* protect religious people, institutions, and communities, because they are a public good and a vital component of a healthy, free society.

i) The Decision directly infringes the s. 2(a) freedom of religion and s. 2(d) religious association and s. 15 equality rights of Christian law students.

ii) The Decision is not proportional and therefore cannot be justified under the *Doré / Oakes* analysis, or LSUC's "public interest" jurisdiction, which is not unfettered.

4. The Court's conclusions on these issues will have significant implications, not only for CLF and its members, but for all religious minorities within the profession.

PART III: ARGUMENT AND ANALYSIS

i) First Issue: The Decision Directly and Severely Limits the *Charter* Rights and Freedoms of Christian Law Students

11. For the Christian law student (and lawyer), the study and practice of law are important, practical expressions of their religious commitment to serve God and neighbour and to fulfil the Biblical mandate to advance justice.[6] Studying law in association with others who share a religious faith and religiously-informed ethics is not a mere "preference", but a constitutionally protected exercise and expression of one's religious faith.[7] SCC jurisprudence strongly supports religious persons' freedom to exercise and express their faith in association with others, without burden or penalties imposed by the state or a state actor (such as LSUC).[8]

12. The Decision violates Christian students' *Charter* rights in two ways. First, it imposes a significant negative burden on *students*—including LGBT students who wish to study law in a Christian university—since they know at the time they apply for law school that a TWU degree will not be recognized in Ontario. That reality may force them to forego an education at TWU, in which case they are robbed of a meaningful choice for their *schooling*.[9]

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[6] Reynolds Affidavit, *supra* note 1, at paras 4, 8-11.

[7] *TWU 2001*, *supra* note 3, JBOA Tab 9, at para 32: "[T]he decision of BCCT ... is preventing them from expressing freely their religious beliefs and associating to put them in practice." (emphasis added).

[8] *Ibid*, at paras 32-25; *Loyola High School v. Quebec*, 2015 SCC 12, JBOA Tab 49, at paras 60-61 [*Loyola*].

[9] Studying law from a religious perspective offers law students a constructive framework within which they can respond to a host of questions that secular law faculties leave unanswered: "[A]nswers to the more practical question

13. Second, even if students nevertheless choose to attend TWU, once they become TWU *graduates*, they will likely be excluded from *practicing* in Ontario. The Decision tells this religious minority they are not equal members of the profession and their views are unwelcome.

14. The right to attend a religious law school, without the right to practice in Canada's largest province would be an impoverished right.[10] The Court below characterized the loss as economic.[11] The Respondent insists that the lack of accreditation does not interfere with the exercise or expression of religious belief.[12] However, the Christian who desires to serve God and neighbour through the vocation (or "calling"[13]) of law—by studying law in order *to become a lawyer*—may wish to attend TWU precisely because no other school, no other campus community, is similarly capable of shaping her mind and character to practice law in accordance with her faith. This motivation is religious, not economic. By being robbed of the choice to attend TWU and practice in Ontario, her freedom to realize her religious calling is impeded.

15. The notion that the study of law is a secular pursuit—a "ventur[ing] into the public domain" where *Charter* freedoms supposedly diminish[14]—betrays a serious misunderstanding of how Evangelical Christians view the so-called "secular". As Justice Campbell recognized, "[Evangelical Christians'] religious faith governs every aspect of their lives."[15] LSUC's failure to recognize the comprehensive nature of the Appellants' religion and its relevance to the study and practice of law demonstrates the need for a law school like TWU's.

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of how to be a good lawyer and a good person, but also … existential questions such as why try to be a good person in the first place. For many religious people, this larger overarching framework provides a moral anchor that enables them to not only resist temptations of greed and abuse of power, but also to situate their legal work within a sense of responsibility and service to the larger community." Pearce & Uelman, "Religious Lawyering in a Liberal Democracy: A Challenge and An Invitation" 55 Case Western Reserve L Rev (2004) 127, JBOA Tab 85, at 150.

[10] *TWU 2001*, *supra* note 3, JBOA Tab 9, at para 35.

[11] Application Decision, at paras 85, 120, 142.

[12] Factum of the Respondent, at paras 68-75.

[13] CLF believes the practice of law is a "calling from God": Reynolds Affidavit, *supra* note 1, at para 4.

[14] Factum of the Respondent, at para 81.

[15] *Trinity Western University v Nova Scotia Barristers Society*, 2015 NSSC 25, JBOA Tab 1, at para 230 [*TWU v NSBS*].

ii) Second Issue: The Decision Does Not Comply with the Proportionate Balancing of Affected *Charter* Rights with the Statutory Objective, as Required by *Doré* and *Oakes*

16. Once it has been established that a decision "engages the *Charter* by limiting its protections,"[16] "the question becomes whether…the decision reflects a proportionate balancing of the *Charter* protections at play".[17] This analysis, as set out by the Supreme Court of Canada in *Doré*, "requires the decision maker to balance the severity of the interference of the *Charter* protection with the statutory objectives".[18] LSUC's Decision does not satisfy this test.

17. The first step in the analysis is to consider the relevant statutory objective. In this case, LSUC relies on the "public interest".[19] An examination of the *Law Society Act* and its regulations and by-laws[20] indicates that the relevant "public interest" considerations relate largely to whether licensees meet an appropriate standard of "learning, professional competence and professional conduct".[21] This consideration is not unfettered, and does not justify overreaching to preclude religion-based law schools which, by their very nature, will make lawful faith-based distinctions regarding religious beliefs and ethics.

18. If the "public interest" is as broad as LSUC contends,[22] the balancing must be between (1) the statutory objective of protecting the "public interest" as encompassing, but not limited to, LGBT equality interests and (2) the burden on TWU and its students' *Charter* rights.

19. Assuming equality concerns, including equality of access to the profession, are relevant

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[16] *Loyola, supra* note 8, JBOA Tab 49, at para 39.
[17] *Ibid.* As stated further in *Doré v Barreau du Québec*, 2012 SCC 12, JBOA Tab 10, at para 56, this analysis "requires the decision maker to balance the severity of the interference of the *Charter* protection with the statutory objectives" [*Doré*].
[18] Following the framework in *Doré*, ibid at para 56, which does not eliminate strict standard for justifying rights infringements under s. 1 of the *Charter*.
[19] In the *Law Society Act*, RSO 1990, c L.8, JBOA Tab 133, s 4.2, the "duty to protect the public interest" is a "principle" to be applied by LSUC "when carrying out its functions, duties and powers". [*LSA*]
[20] Specifically, By-Law 4, JBOA Tab 168, which pertains to the requirements for obtaining a license.
[21] Appellants' Factum, at paras 26, 27, 41, 51, 69.
[22] CLF affirms the point in the Appellant's Factum, para 69, that the "duty to protect the public interest" is not a freestanding duty, but limited, in the context of accreditation, to ensuring graduates' competence and good character. It was, after all, the possible *effect* of TWU's Covenant on the character of the graduate that was the relevant consideration in *TWU 2001*, *supra* note 3, JBOA Tab 9, (see paras 13 and 32).

to the decision of whether to accredit TWU, two points must be made. First, the equality rights of LGBT (or any other) individuals would not be violated by the accreditation of TWU's law school.[23] Second, denying accreditation does not help any minority group, religious or otherwise, to join the profession. [24] It simply prevents students from choosing TWU. As Justice Campbell found, "this is not a situation in which there even are conflicting rights."[25]

20. Furthermore, if *Human Rights Code* and *Charter* values shape the "duty to protect the public interest", as LSUC argues, LSUC must consider *all* applicable human rights and *Charter* values, not just the equality interests of one particular group. It must also consider and accommodate the equality rights and fundamental freedoms (including religion, expression and association) of all groups, including TWU and its students, and all religious or other minorities.[26] The LSUC did not do this; nor did the Divisional Court. LSUC should have considered the fact that human rights values include special protections for religious and other private institutions.[27] Such exemptions honour and advance *Charter* rights and freedoms, not detract from them.[28]

21. The actual nature of the alleged discrimination/equality infringement stemming from TWU's Community Covenant must also be properly understood before it can be weighed in the balance. By calling students or members to live by a Christian ethic, Christian organizations do not ask members to deny their identity or dignity. Rather, in order to have an ethic at all,

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[23] *TWU v NSBS*, *supra* note 15, JBOA Tab 1, at para 253-255.
[24] Nor does it promote access to justice, another one of the *Law Society Act*'s guiding principles for LSUC, in s. 4.2.
[25] *TWU v NSBS*, *supra* note 15, JBOA Tab 1, at para 239.
[26] *TWU 2001*, *supra* note 3, JBOA Tab 9, at para 32. See also *Waycobah First Nation v Canada (Attorney General)*, [2010] FCJ No 1486, JBOA Tab 79, at para 31, aff'd [2011] FCJ No 847 (FCA), where the court held that decision-making in the public interest must consider the broader interests of other groups and society generally, not just one segment of the population.
[27] *TWU 2001*, *ibid*, at para 34: "Consideration of human rights values in these circumstances encompasses consideration of the place of private institutions in our society and the reconciling of competing rights and values." Ontario's *Code*, *supra* note 3, JBOA Tab 132, exempts religious institutions (including schools) in s. 18.
[28] The Ontario Human Rights Commission's *Policy on creed and the accommodation of religious observances* (2015), JBOA Tab 82, for example, recognizes that *Code* exemptions for religious organizations respect fundamental constitutional freedoms of religion and association, at 46-48. See also the discussion of the need for accommodation of diverse religious beliefs of religious minorities in Peter Lauwers, "Religion and the Ambiguities of Liberal Pluralism", (2007) 37 SCLR (2d) 1 at pp 16-29, 36-45.

religious or otherwise, drawing distinctions is necessary and permissible, even with regard to sexual conduct.[29] LSUC tries to erase the distinction between identity and conduct for *all* purposes, the end result of which is to eradicate competing ethical views entirely.

22. LSUC's Decision may be intended to represent a symbolic statement about promoting equality and diversity, but as a statement it does nothing to protect equality interests.[30] To the contrary, the Decision undermines diversity by discouraging religious persons from joining the profession. The Decision stifles diversity of beliefs and opinion, and the expression of diverse opinions and beliefs, which is essential for a healthy democracy.[31] The version of "diversity" the LSUC seeks to promote is one that excludes individuals who believe in a religious view of marriage, despite the Supreme Court's statements in the *Same-Sex Marriage Reference*, and clear legislative direction that "it is not against the public interest to hold and publicly declare diverse views on marriage."[32]

23. The Decision is inconsistent with LSUC's own 2005 Statement of Principles, *Respect for Religious and Spiritual Beliefs*,[33] which specifically condemns "in the strongest terms" all manifestations and forms of "discrimination based upon religious and spiritual beliefs",[34] and "religious intolerance directed at any group or community."[35] LSUC further undertook to "promote and support religious understanding and respect both inside and outside the legal

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[29] *Whatcott v Saskatchewan Human Rights Tribunal*, 2013 SCC 11, JBOA Tab 61, at para 122: "I agree that sexual orientation and sexual behaviour can be differentiated for certain purposes." In the context of hate speech, expression regarding conduct must not be "framed in such a way as to expose persons of an identifiable sexual orientation to what is objectively viewed as detestation and vilification." (para. 124) [*Whatcott*].
[30] *TWU v NSBS*, *supra* note 15, JBOA Tab 1, at para 264.
[31] *Loyola*, *supra* note 8, JBOA Tab 49, at para 48.
[32] *Civil Marriage Act*, SC 2005, c 33, Preamble and s. 3.1. See also *Reference re Same-Sex Marriage*, 2004 SCC 79 at paras 6,55-60, JBOA Tab 63.
[33] Law Society of Upper Canada (LSUC), *Respect for Religious and Spiritual Beliefs: A Statement of Principles of the Law Society of Upper Canada* (Toronto: LSUC, 2005), JBOA Tab 91.
[34] *Ibid*, at para 51.
[35] *Ibid.*

profession."[36] LSUC should have complied with its own articulations of the public interest.

24. LSUC argues that (1) accreditation would condone TWU's Covenant and (2) accreditation might result in unequal access to law school placements in Canada. First, accrediting TWU is not to endorse or "condone" its beliefs. The Ontario legislature does not endorse or condone the membership policies of "religious, philanthropic, educational, fraternal or social institution[s] or organization[s]" by exempting them from compliance with *Code* requirements.[37] Second, the fact that a religious university encourages and helps students within a particular religious community to obtain an education is a social good. Simply because it serves people who affirm its religious beliefs, does not mean it does so at others' expense. Should Christian, Muslim, LGBT, or any other identifiable group of lawyers be prohibited from obtaining any benefits from membership in an association of lawyers because such associations do not exist for every identifiable group?

25. TWU, like CLF, is a community of people freely associating for a religious purpose, a purpose so all-encompassing that it touches on education, vocation, and personal conduct. By so associating and exercising their religion, members of this religious minority are encouraged and equipped to enter professions, such as law. By requiring such institutions such as TWU (or, in future, groups like CLF) to be open to those who do not affirm their mission, not only are *Charter* rights violated, but the public interest is harmed because such groups would not exist if the state required them to deny their core beliefs. The lack of such diverse associations and institutions is not in the public interest.

26. The second stage of the *Doré* analysis requires consideration of the affected Charter

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[36] *Ibid*, at para 52. See also the U.N. *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, GA Res 36/55, JBOA Tab 81, Articles 1-3 and 9, which protect "the right of all persons to manifest their religion or belief, alone or in community with others and in public or private" (emphasis added).

[37] *Code*, *supra* note 3, JBOA Tab 132, s 18.

values and rights.[38] In this case, LSUC was required to fully consider the severity of the impact of its decision on the freedom of religion and association of Christian law students, and to consider the discriminatory impact of its decision to deny access to the profession to this religious minority.[39] LSUC failed to consider that the impact of its decision on Christian students' rights was direct, severe, and immediate.[40] Rather, LSUC's concerns involve speculative fears about being (mis)perceived as "endorsing" the allegedly discriminatory Covenant, not any real or apparent risk that any TWU law graduates will be incompetent or discriminatory as lawyers.

LSUC's does not have unfettered discretion pursuant to its public interest jurisdiction

27. The *Charter* requires discernible limits to be placed on LSUC's discretion to protect the public interest. Any *Charter* infringements resulting from LSUC decisions must be "prescribed by law" in order to be justified under section 1.[41] If LSUC's "duty to protect the public interest" is not limited to ensuring its members meet certain standards of learning, competence, and character, then it has no discernible limits, and if it has no discernible limits, the "prescribed by law" standard cannot be satisfied. If so limited, however, then LSUC's decision was based on irrelevant consideration and therefore constitutes an abuse of its discretion.

28. The judgment below illustrates how impermissibly vague s. 4.2 of the Act becomes if LSUC's position regarding the breadth of its jurisdiction is accepted. The judgment states:

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[38] As stated in *Doré, supra* note 17, JBOA Tab 10, at para 56, this analysis "requires the decision maker to balance the severity of the interference of the Charter protection with the statutory objectives".

[39] Following the framework in *Doré, ibid*, which does not eliminate strict standard for justifying rights infringements under s. 1 of the *Charter*.

[40] See Appellant's Factum, at paras 76-86.

[41] Section 1 case law says that a law authorizing state action must set a discernible limit, cannot be vague, undefined, or totally discretionary, but must be ascertainable and understandable. As the Supreme Court reiterated in *McKinney v. University of Guelph,* [1990] 3 S.C.R. 229, JBOA Tab 20, at 395 (quoting *Irwin Toy Ltd. v. Quebec (Attorney General),* [1989] 1 SCR 927), "[W]here there is no intelligible standard and where the legislature has given a plenary discretion to do whatever seems best in a wide set of circumstances, there is no 'limit prescribed by law'." That government action must be authorized by law is a principle long predating the *Charter*, see *Roncarelli v Duplessis*, [1959] S.C.R. 121 at 140.

> While much attention in this case was directed at the discriminatory effect of TWU's Community Covenant on LGBTQ persons, the reality is that the discrimination … extends not only to those persons, but also to women generally … and to those persons who have other religious beliefs.[42]

It even becomes irrelevant whether the alleged "discrimination" is lawful or unlawful. Consequently, it is impossible for TWU to know how much or how often it would have to change in order to please the Respondent. It might have to give up its religious identity entirely.

29. The law must be interpreted in a way that makes its meaning and application predictable and understandable. If speculative fears about being misperceived as endorsing an institution's (or association's or individual's) religious beliefs are a relevant factor in the exercise of LSUC's discretion, there is no longer a discernible limit to LSUC's discretion.

The Decision Does Not Reflect Necessary "State Neutrality" Towards Religion

30. LSUC must be neutral towards a religious academic institution's lawful, religiously-informed code of conduct for members, whether it finds the organization's beliefs praiseworthy or objectionable. In *Saguenay*[43], the Supreme Court articulated a concept of state neutrality which requires the state not to interfere in religion and beliefs. Importantly, the Court said a neutral public space "does not mean the homogenization of private players in that space."[44]

31. State neutrality is a principle specific to the interpretation of s. 2(a), but it is also reflected in the *Charter*'s preamble. The *Charter*'s preamble represents a "kind of secular humility, a recognition that there are other truths, other sources of competing worldviews, of normative and authoritative communities that are profound sources of meaning in people's lives that ought to be

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[42] Application Decision, at para 108. The Respondent also cites all of these grounds and more as reasons to refuse to accredit TWU: Respondent's Factum, at para 25.

[43] *Mouvement laïque québécois v Saguenay (City)*, 2015 SCC 16, JBOA Tab 3.

[44] *Ibid.* at para 74. The Court continued: "On the contrary, a neutral public space free from coercion, pressure and judgment on the part of public authorities in matters of spirituality is intended to protect every person's freedom and dignity. … The rights and freedoms set out in the *Quebec Charter* and the *Canadian Charter* reflect the pursuit of an ideal: a free and democratic society. This pursuit requires the state to encourage everyone to participate freely in public life regardless of their beliefs." *Ibid.* at paras 74-75 (emphasis added, references omitted).

nurtured as counter-balances to state authority."[45] The state is not the sole or ultimate religious, moral, or philosophical authority.

PART IV: CONCLUSION

32. If LSUC holds it to be contrary to the public interest for a law faculty to support a religiously-informed view of marriage, then LSUC could penalize any lawyer who rejects the state view on various religious or ethical issues. The message of the Decision is that it is not enough to serve LGBT colleagues and clients impartially and according to law. The message is that lawyers and students must also refrain from publicly expressing or endorsing religious beliefs which conflict with the political norms of the day. This has implications for all legal professionals who are subject to regulation. If the Decision is upheld, it will create a climate in which many legal professionals with such views will be afraid to speak out or be professionally penalized for doing so. The Respondent may say this is a good thing. But fear of holding and expressing religious views is not a good thing in a free and democratic society.

PART V: ORDER SOUGHT

33. CLF submits that the appeal ought to be granted. CLF respectfully requests that it be granted ten minutes for oral argument at the hearing of the appeal. CLF seeks no costs and asks that no costs be granted against it, pursuant to the order of Hoy A.C.J.O.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of February, 2016,

per: Derek Ross

Peter R. Jervis **Derek B.M. Ross** **Jonathan R. Sikkema**

Lawyers for the Intervener, Christian Legal Fellowship

[45] Bruce Ryder, "State Neutrality and Freedom of Conscience and Religion" (2005), 29 SCLR (2d). Professor Ryder comments, further: "The supremacy of God clause is perhaps best understood as a reminder of the state's role in not just respecting the autonomy of faith communities, but also in nurturing and supporting them, as long as it does so in an even-handed manner."

SCHEDULE A – List of Authorities

CASES	JBOA TAB
Doré v Barreau du Québec, 2012 SCC 12	10
Loyola High School v Québec (Attorney General), 2015 SCC 12	49
McKinney v. University of Guelph, [1990] 3 S.C.R. 229	20
Mouvement laïque Québécois v Saguenay (City), 2015 SCC 16	3
Reference re Same-Sex Marriage, 2004 SCC 79	63
Roncarelli v Duplessis, [1959] SCR 121	80
Trinity Western University v BC College of Teachers, 2001 SCC 31	9
Trinity Western University v Nova Scotia Barristers Society, 2015 NSSC 25	1
Waycobah First Nation v Canada (Attorney General), [2010] FCJ No 1486, aff'd [2011] FCJ No 847 (FCA)	79
Whatcott v Saskatchewan Human Rights Tribunal, 2013 SCC 11	61

SCHEDULE B - Statutes & Regulations & Journal References

STATUTES, REGULATIONS, and JOURNAL REFERENCES	**JBOA TAB**
Human Rights Code, RSO 199, c H.19	132
Peter Lauwers "Religion and the Ambiguities of Liberal Pluralism", (2007) 37 SCLR (2d) 1 at pp 16-29, 36-45.	CLF Supplemental BOA
The *Law Society Act*, RSO 1990, c L.8	133
Law Society of Upper Canada, By-Law 4	168
Law Society of Upper Canada (LSUC), *Respect for Religious and Spiritual Beliefs: A Statement of Principles of the Law Society of Upper Canada* (Toronto: LSUC, 2005)	91
Ontario Human Rights Commission, *Policy on creed and the accommodation of religious observances* (2015)	82
Pearce & Uelman, "Religious Lawyering in a Liberal Democracy: A Challenge and An Invitation" 55 Case Western Reserve L Rev (2004) 127	85
Bruce Ryder, "State Neutrality and Freedom of Conscience and Religion" (2005), 29 SCLR (2d)	116
United Nations, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,* GA Res 36/55	81

SCHEDULE C - *Civil Marriage Act*, SC 2005, c 33

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

Preamble

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

(...)

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

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

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

(...)

Freedom of conscience and religion and expression of beliefs

3.1 For greater certainty, no person or organization shall be deprived of any benefit, or be subject to any obligation or sanction, under any law of the Parliament of Canada solely by reason of their exercise, in respect of marriage between persons of the same sex, of the freedom of conscience and religion guaranteed under the Canadian Charter of Rights and Freedoms or the expression of their beliefs in respect of marriage as the union of a man and woman to the exclusion of all others based on that guaranteed freedom.