COURT OF APPEAL FILE NO. CA43367

COURT OF APPEAL

ON APPEAL FROM the order of Chief Justice Hinkson of the Supreme Court of British Columbia pronounced on the 10th day of December, 2015.

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

APPELLANT
(RESPONDENT)

AND

TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT

RESPONDENTS
(PETITIONERS)

AND

THE ADVOCATES' SOCIETY, THE ASSOCIATION FOR REFORMED POLITICAL ACTION (ARPA) CANADA, CANADIAN COUNCIL OF CHRISTIAN CHARITIES, CANADIAN SECULAR ALLIANCE AND THE BRITISH COLUMBIA HUMANIST ASSOCIATION, CHRISTIAN LEGAL FELLOWSHIP, THE EVANGELICAL FELLOWSHIP OF CANADA AND CHRISTIAN HIGHER EDUCATION CANADA, JUSTICE CENTRE FOR CONSTITUTIONAL FREEDOMS, OUTLAWS UBC OUTLAWS UVIC OUTLAWS TRU AND QMUNITY, THE ROMAN CATHOLIC ARCHDIOCESE OF VANCOUVER THE CATHOLIC CIVIL RIGHTS LEAGUE AND THE FAITH AND FREEDOM ALLIANCE, THE SEVENTH-DAY ADVENTIST CHURCH IN CANADA, AND WEST COAST WOMEN'S LEGAL EDUCATION AND ACTION FUND

INTERVENERS

FACTUM OF THE INTERVENER CHRISTIAN LEGAL FELLOWSHIP

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OPENING STATEMENT

Legal professionals, including the more than 600 law students, professors, lawyers, and retired judges from over 30 Christian denominations who form the Christian Legal Fellowship ("CLF"), have the freedom to express and exercise their religious beliefs, and to freely associate with others who share those beliefs without consequential discrimination by the Law Society of British Columbia ("LSBC") or other state actors. The *Charter* and B.C.'s *Human Rights Code* protect the right not to be deprived of the opportunity to obtain or maintain a professional licence, and the freedom of religious associations and their members to participate in society. LSBC's Decision to reject all graduates of the proposed law school of Trinity Western University ("TWU") violates the *Charter* rights of religious law students and implicates the rights of all religious lawyers.

The Decision cannot be justified under the *Doré* framework for applying s. 1 of the *Charter*. The Decision advances no statutory objective. LSBC offers no evidence to demonstrate how approving TWU would undermine the public interest in the administration of justice. It is not against the public interest to hold and express diverse views on marriage. Nor is it against the public interest to acquire training within a Christian philosophy and community. If anything, the Decision is contrary to the public interest. It undermines the role of religious minorities in public life and their inclusion in a pluralistic society. The *Charter* and the *Code* protect religious persons and institutions because they are vital components of a healthy, free society. The Decision is therefore unreasonable.

Qualification for entry or continued membership in the legal profession should not depend on a simple vote pursuant to an ambiguous rule, but on objective application of intelligible, published criteria. This Court is being asked to affirm a Decision based on the LSBC's overly broad reading of Rule 2-27(4.1) ("Rule 4.1"), by which LSBC effectively seeks plenary discretion to reject academic qualifications for any or no reason. In order to be "prescribed by law", state action limiting a right must be based on a statutory provision, regulation, or rule that sets an intelligible standard to guide state action. Rule 4.1 contains no criteria. It should be interpreted through ss. 20 and 21 of the *LPA* to be limited to concerns regarding competence; otherwise, it sets no intelligible standard. To permit LSBC to limit *Charter* rights in a vague and arbitrary manner would turn both the guiding principle of the rule of law and the "prescribed by law" requirement on their head.

PART 1: STATEMENT OF FACTS

1. This intervener agrees with the facts as set out by the Respondents.

PART 2: ISSUES ON APPEAL

2. Christian Legal Fellowship will argue the following issues:

   i) The Decision violates the *Charter* by directly infringing Christian law students' freedom of religion, expression, and association, and their right to equality under law.

   ii) The Decision cannot be justified under the *Doré / Oakes* analysis, as it does not advance any of LSBC's statutory objectives.

   iii) On the Appellant's reading of Rule 4.1, the Decision cannot satisfy the *Charter*'s "prescribed by law" requirement under s. 1.

3. 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 legal profession.

PART 3: ARGUMENT

i) First Issue: The Decision directly and severely limits the *Charter* rights and freedoms of Christian law students

4. 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. Studying law in association with others who share a religious faith and religiously-informed ethic is not a mere "preference", but a constitutionally protected exercise and expression of one's religious faith. As the SCC stated in *BCCT*, "[T]he decision of BCCT … is preventing them from expressing freely their religious beliefs and associating to put them in practice" (emphasis added). SCC jurisprudence strongly supports religious persons' freedom to exercise and express their faith in association with others, without state-imposed penalties.

Affidavit of Robert Reynolds in support of CLF's Motion to Intervene, at paras 4, 8-11.
Trinity Western University v. British Columbia College of Teachers, 2001 SCC 31 at paras 32, 32-25 [***BCCT***].
Loyola High School v. Quebec (Attorney General), at paras 60-61 [***Loyola***].

5. The Decision violates Christian students' *Charter* rights in two ways. First, it imposes a significant burden on students who wish to attend TWU—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. That reality may force

them to forego an education at TWU, in which case they are robbed of a meaningful choice for their *schooling*.

6. Second, even if students nevertheless choose to attend TWU, once they become graduates, they will likely be excluded from *practicing* in B.C. The sole gatekeeper of the legal profession in BC, LSBC, has told would-be TWU students they are not equally suited for admission to the profession, even if they complete a course of academic study that meets the same substantive requirements as graduates of other Canadian law schools.

7. The right to attend a religious law school, without the right to practice, would be an impoverished right. LSBC argues that refusing to approve TWU does not substantially interfere with the exercise or expression of religious belief. However, the Christian who desires to serve God and neighbour through the vocation (or "calling") 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 supporting her in shaping her mind and character to practice law in accordance with her faith. The motivation is religious. CLF understands this, as it also believes legal practice is a "calling from God". By being robbed of the choice to attend TWU and practice in BC, the freedom to realize one's religious calling is impeded.

BCCT at para 35.
Factum of the Appellant at paras 165-168.
Reynolds Affidavit at para 4.

8. The notion that the study of law is a secular pursuit— "Instruction in law is not the practice of a religion", the Appellant claims—betrays a serious misunderstanding of how many Christians view faith and the "secular". As the Nova Scotia Supreme Court recognized, "[Evangelical Christians'] religious faith governs every aspect of their lives." LSBC's failure to grasp the nature of the Respondents' religious faith and its relevance to the study and practice of law perhaps shows the need for a law school like TWU's.

Factum of the Appellant at paras 163-169.
Trinity Western University v. Nova Scotia Barristers Society, 2015 NSSC 25 at para 230 [***TWU v NSBS***].

9. It is not for LSBC to question whether particular beliefs and communal ethical standards are actually required by a religious faith. Provided that a claimant demonstrates a sincere belief that a certain practice "engenders a personal, subjective connection to

the divine or to the subject or object of his or her spiritual faith, and as long as that practice has a nexus with religion" it is protected by the *Charter*. Adhering to a code of conduct in community with others who do likewise, whether in a church or university, allows individuals to affirm their religious beliefs and to foster such a "connection with the divine".

Syndicat Northcrest v. Amselem, 2004 SCC 47, at para 69.

ii) <u>Second Issue: The Decision does not comply with the proportionate balancing of affected *Charter* rights with statutory objectives as required by *Doré* and *Oakes*.</u>

10. Once it has been established that a decision "engages the *Charter* by limiting its protections," the *Doré* analysis "requires the decision maker to balance the severity of the interference of the *Charter* protection with the statutory objectives". The *Doré* framework does not eliminate the strict standard for justifying limits on *Charter* rights and freedoms under s. 1. Rather, as the SCC explained in *Loyola*, there is conceptual harmony between a *Doré* analysis and an *Oakes* analysis. The balancing must give "effect, as fully as possible to the *Charter* protections at stake given the particular statutory mandate."

Doré at para 56.
Loyola at paras 39-40.

11. The Appellant has not satisfied this test. Beyond its unfounded assertion that approving TWU would negatively impact equal access to the profession, the Appellant has not demonstrated how its Decision advances any statutory objective. Nor does LSBC explain how it limits the Respondents' rights as little as possible. The Appellant says simply that a balancing of rights was done, and that either approving or disapproving TWU was reasonable. Given how it articulates the legal test, the Appellant appears to mistakenly believe that, post-*Doré*, demonstrable justification and minimal infringement are no longer required. Moreover, the Appellant attempts to add LGBT equality as a weight on the statutory objective ("public interest") side of the scale, without demonstrating how approving TWU would infringe anyone's equality rights.

Factum of the Appellant at Opening Statement, paras 67, 90, 92.
Loyola at para 40.

Rejecting TWU *does not advance* the statutory objective

12. *Charter* rights can only be limited pursuant to a valid statutory objective. LSBC relies on its duty to protect "the public interest in the administration of justice" under s. 3

of the *Legal Profession Act*, SBC 1998, C9 (*LPA*), in combination with its authority under ss. 20 and 21 to "establish academic requirements" for enrolment in articling in B.C. and admission to the bar. However, it is not clear that the code of conduct of a private religious university has any bearing on the public interest in the administration of justice, beyond its potential impact on the graduate's character or competence (and in turn the impact a TWU graduate might have on the administration of justice or, in *BCCT*, the public school system – both matters of public interest), which was the SCC's sole concern in *BCCT*.

Factum of the Appellant at paras 41, 45, 66, 96, 99.
BCCT at paras 13, 32.

13. Even assuming that equality concerns, including equality of access to the profession and perceived condonation of TWU's Covenant, are relevant factors in deciding whether to approve TWU, two points must be made. First, the equality rights of LGBT (or any other) individuals would not be violated by approving TWU's law school. Just as there was no conflict of rights in *BCCT*, there is no conflict here. Second, rejecting TWU does not help any minority, religious or otherwise, enter the profession. It simply prevents students from choosing TWU. LSBC does not and cannot control the number of law schools or law school spots in Canada or B.C. It does not establish or disestablish universities or law schools. LSBC does not have a mandate to interfere with civil society and its institutions or associations in an attempt to ensure that all students are comfortable with abiding by their lawful internal policies. It has a mandate to set standards governing academic qualifications for admission to the bar.

BCCT at paras 29, 33.
TWU v NSBS at paras 239, 253-255.
LPA ss. 20, 21.

14. LSBC argues that accepting TWU graduates would (1) condone TWU's Covenant and (2) cause unequal access to law school placements. First, to approve TWU is not to endorse or condone its beliefs, just as the B.C. legislature does not endorse the specific content of membership policies of "charitable, philanthropic, educational, fraternal, religious or social organization[s] or corporation[s]" through s. 41(1) of the *Human Rights Code*, RSBC 1996, c 210, (which respects their *Charter* s. 2 rights). Second, the fact that a religious university encourages and helps students within a particular community to obtain an education is a social good. That it serves primarily people who affirm its beliefs

does not mean it does so at others' expense.

Factum of the Appellant at paras 160, 169-170.

15. Finally, the actual nature of the alleged "discrimination" stemming from TWU's Community Covenant, *if* relevant, must also be properly understood before it can be weighed in the balance. It is clear that TWU violates no law, yet it is alleged that the school does harm in other ways. However, 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, drawing distinctions is necessary and permissible, even with regard to sexual conduct. The SCC in *Whatcott* affirmed that sexual behavior and sexual orientation can be differentiated for certain purposes. LSBC tries to erase the distinction between identity and conduct for *all* purposes, the end result of which would be to eradicate competing ethical perspectives entirely.

Whatcott v Saskatchewan Human Rights Tribunal, 2013 SCC 11 at paras 122, 124.

Rejecting TWU *undermines* the public interest

16. If human rights and *Charter* values inform the duty to protect the public interest, LSBC must consider *all* applicable human rights and *Charter* values, not just the equality interests of one particular group, but 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. LSBC did not do this. LSBC was required to consider the fact that human rights values include special protections for religious and other private institutions in society, as the SCC noted in *BCCT*. Such exemptions exist to protect and advance *Charter* rights and freedoms, not detract from them.

BCCT at paras 32, 34.
Waycobah First Nation v Canada (Attorney General), [2010] F.C.J. No 1486, at para 31, aff'd [2011] F.C.J. No 847 (FCA).
Human Rights Code, RSBC 1996, c 210 at s 41.

17. The Decision undermines diversity by discouraging religious persons from joining the profession. The Decision stifles diversity of beliefs and opinion, which is essential for a healthy democracy. The version of "diversity" LSBC seeks to promote is one that ends at the point of conflicting, unfashionable views. It excludes individuals who hold to a particular view of marriage, despite SCC jurisprudence and clear legislative direction that

"it is not against the public interest to hold and publicly declare diverse views on marriage." This is not diversity, but intolerance. True diversity demands grace and tolerance in order to live respectfully with disagreement.

Civil Marriage Act, S.C. 2005, c. 33, Preamble and s. 3.1.
Reference re Same-Sex Marriage, 2004 SCC 79.
BCCT at para 33.

18. TWU, like this intervener, is a community of people freely associating for a religious purpose, a purpose that touches on education, vocation, and personal conduct. By so associating and exercising their religion, members of a religious minority may be encouraged and equipped to enter professions, such as law. By requiring institutions such as TWU (or, in future, associations like CLF) to be open to those who do not affirm their mission, not only would fundamental *Charter* freedoms be violated, but the public interest would be harmed. Such groups would not exist if the state required them to deny their core beliefs. Such diverse associations and institutions provide a check on state power.

Loyola at para 48.

19. In sum, denying approval to TWU undermines, not advances, the public interest. LSBC feared being (mis)perceived as giving its "imprimatur" to TWU's allegedly discriminatory Covenant, not any real or apparent risk that TWU law graduates will be incompetent or unfit to be lawyers. The Decision is therefore unreasonable.

The Decision is not neutral towards the religious content of TWU's Covenant

20. State neutrality is a principle specific to applying 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 nurtured as counter-balances to state authority." The state is not the sole or ultimate religious, moral, or philosophical authority.

Bruce Ryder, "State Neutrality and Freedom of Conscience and Religion" (2005), 29 S.C.L.R. (2d).

21. LSBC 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*, the SCC stated that a neutral public space

"does not mean the homogenization of private players in that space" but "requires the state to encourage everyone to participate freely in public life regardless of their beliefs."

Mouvement laïque québécois v Saguenay (City), 2015 SCC 16, at para 75 [***Saguenay***].

22. The Resolution serves merely as a symbolic statement, one that does not actually protect anyone's fundamental rights or freedoms, but which amounts to a moral condemnation of TWU's and its members' position on sexuality and marriage. Under *Saguenay,* it is not the role of a law society to exercise moral judgment over law students' and lawyers' lawful religious beliefs or those of the organizations to which they belong. The Decision violates the principle of neutrality and is therefore unreasonable.

Saguenay at paras 74, 83.
TWU v NSBS at para 264.

iii) Third Issue: On the Appellant's reading of Rule 4.1, the limits on *Charter* rights resulting from its Decision cannot meet the "prescribed by law" requirement in s. 1 of the *Charter*

23. While Rule 4.1 itself violates no *Charter* right, and is not challenged, any action or decision that limits a *Charter* right *based on* this Rule cannot stand unless the Rule satisfies the "prescribed by law" requirement under s. 1. An action by a state actor can only be said to be "prescribed by law" if it is authorized by a statute, regulation, or rule that sets an intelligible standard. Though the "prescribed by law" requirement is often easily met in judicial review of administrative decisions (rarely is a decision based on a rule granting plenary discretion), it must not be neglected. Once a limit on a *Charter* right has been found, the onus shifts to government to show the limit is prescribed by law.

Greater Vancouver Transportation Authority v. Canadian Federation of Students, 2009 SCC 31 at para 55 [***CFS***].

If possible, the Rule should be interpreted in a manner that would set an intelligible standard on eligibility for enrollment in the admissions program

24. The Respondents sensibly ask this Court to interpret Rule 4.1 in a manner that would create an intelligible standard by reading it in the context of ss. 20 and 21 of the *LPA*. Rule 4.1 is after all part of the Rules addressing academic requirements. Though the Rule is broad on its face, the Court could read into it a requirement that a Resolution to disapprove a faculty of law must be based on some proven shortcoming or legitimate concern regarding the competence of a law faculty's graduates. Doing so would bring

Rule 4.1 in line with the *LPA* and resolve the problem that Rule 4.1 appears, viewed in isolation, to give untrammelled discretion. That is the only way the Decision can be "prescribed by law". It would also mean that, because the Decision was not based on any academic shortcoming of TWU's program or problem with its future graduates, it was based on irrelevant considerations and was therefore an abuse of discretion.

Factum of the Respondents at paras 93-96

***If* the Appellant's interpretation of Rule 4.1 is accepted, any decision based on the Rule that limits *Charter* rights cannot be justified under s. 1**

25. In order to be "prescribed by law" the Decision must be based on a rule that places discernible limits on LSBC's discretion to determine a person or group's eligibility for enrollment in articling and admission to the bar. As the SCC stated in *Irwin Toy,* "where 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'." What is true of legislation authorizing state action is also true of rules, regulations, or policies that do the same (*CFS* at para. 55). The Respondents have suggested an interpretation that would set limits on LSBC's discretion, but if the Appellant's interpretation were to be accepted, Rule 4.1 would fail this test.

Irwin Toy Ltd. v. Quebec (AG), [1989] 1 S.C.R. 927, [1989] S.C.J. No. 36 at para 63 [***Irwin Toy***].
Bonitto v. Halifax Regional School Board, 2015 NSCA 80 at para 72.

26. After the Appellant learned that TWU had submitted a proposal for a new law school to the Federation of Law Societies, it might have passed a rule saying, for example, "A law degree obtained from a university that limits the sexual autonomy of its students shall not satisfy the academic qualifications required for enrollment in the admission program." In that case, it would be clear to everyone what standard TWU's law program failed to satisfy, the rule itself might have been subject to a *Charter* challenge (not the case here), and this Court might be conducting an *Oakes* analysis. Instead, the Appellant passed Rule 4.1, which *on its face* allows it to reject law degrees from any law school by a simple vote, which LSBC seems to believe makes passing s. 1 scrutiny much easier.

27. Allowing LSBC to operate in this manner jeopardizes the rights of those, including members of CLF, who are or wish to become members of LSBC. Rule 4.1, on the

Appellant's reading of it, would be fundamentally at odds with the constitutional principle of the rule of law, which protects rights and freedoms first by precluding unfettered discretion. The rule of law requires intelligibility and predictability. Today, LSBC claims that the alleged discriminatory effect of TWU's Covenant on LGBT and female students justifies its Decision. Tomorrow, LSBC might decide that TWU's hiring policy is problematic, or that a TWU faculty member's publications are offensive. Based on its interpretation of Rule 4.1, any reason will do, or no reason at all. There are no guidelines.

Committee for the Commonwealth of Canada v. Canada, [1991] 1 S.C.R. 139, 1 S.C.J. No. 3 at para 169.
Pearson v Canada, [2000] F.C.J. 1444 at para 10.
Roncarelli v. Duplessis, [1959] S.C.R. 121 at 140.

28. This can be compared with *Bonitto*, in which a school principal prohibited the plaintiff from distributing tracts at a public school. The plaintiff argued that this limit on his freedom of expression was not prescribed by law. The Court found against the plaintiff, because the principal's discretion to (dis)approve materials was subject to a published list of guidelines in the Board's "Distribution and Display of Materials Policy", a policy the Board passed pursuant to its enabling legislation. The Court noted that the guidelines were "sufficiently precise and accessible" to govern the decision maker's discretion in a manner sufficient to meet the "prescribed by law" requirement. In LSBC's case, however, rather than add guidance for exercising its discretion to establish "academic requirements" under ss. 20, and 21, Rule 4.1 (if the Appellant's reading and application of it is accepted) would broaden LSBC's discretion beyond that granted by the *LPA*.

Bonitto v. Halifax Regional School Board, 2015 NSCA 80 at paras 15, 22, 72.

29. This Court should avoid inadvertently encouraging law societies (and other regulatory bodies) to pass vague rules and interpret them outside of their statutory context out of the belief that doing so makes it easier to prevent or withstand judicial review where their actions or decisions limit *Charter* rights and freedoms. Members of CLF, like all persons, deserve to know in advance whether and how their membership in certain associations could impact, for example, their eligibility to be or become a member of the bar, or a bencher, or an articling principal—all of which are subject to LSBC rules.

The Decision creates uncertainty and has a chilling effect

30. If the Decision is upheld, it will create a climate in which many legal professionals with such views will be afraid to express their beliefs or associate for the purpose of exercising their beliefs. It will also create uncertainty with respect to whether and how one's religious expression or associations could impact their standing with LSBC.

31. For example, based on its line of argument in this case, might LSBC in the future reject as academically qualified someone who earned their undergraduate degree at TWU, or their law degree at Brigham Young University or Notre Dame, which have similar codes of conduct? What if a student completed one year of law school at TWU and then transferred to a different law school: would that disqualify her? How might the Decision impact the TWU graduate who is called to the Alberta Bar, practices for two years and moves to B.C.? Where does this leave lawyers, judges, and law professors who hold beliefs similar to those embodied in TWU's Covenant and who currently work in B.C.?

Affidavit #1 of Earl Phillips at 742-766, Exhibit "N", JAB Vol. 2.

32. Some of these scenarios would apply to many persons, including members of CLF, who are currently practicing law in Canada. Will these lawyers now be subject to additional scrutiny from LSBC to ensure that any past or current associations, religious beliefs or expression align with the LSBC definition of the public interest? As the SCC recognized in *BCCT* and the Nova Scotia Supreme Court recently observed, if signing TWU's Covenant is enough to justify rejecting one's academic qualifications, the same might be said of membership in a church or, by extension, any religious association.

BCCT at para 33.
TWU v NSBS at para 188.

PART 4: ORDER SOUGHT

33. CLF respectfully requests that it be granted oral argument at the hearing of the appeal. CLF seeks no costs and asks that no costs be granted against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of April, 2016**,**

Derek B.M. Ross **Jonathan R. Sikkema**
Lawyers for the Intervener, Christian Legal Fellowship

APPENDIX: ENACTMENTS

CIVIL MARRIAGE ACT, S.C. 2005, c. 33

Preamble

[…]

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.

HUMAN RIGHTS CODE, R.S.B.C. 1996, c. 210

Discrimination by unions and associations

14 A trade union, employers' organization or occupational association must not

(a) exclude any person from membership,

(b) expel or suspend any member, or

(c) discriminate against any person or member because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or member, or because that person or member has been convicted of a criminal or summary conviction offence that is unrelated to the membership or intended membership.

Exemptions

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

(2) Nothing in this Code prohibits a distinction on the basis of age if that distinction is permitted or required by any Act or regulation.

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