

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

BETWEEN:

TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT

Applicants

- and -

LAW SOCIETY OF UPPER CANADA

Respondent

- and -

ATTORNEY GENERAL OF CANADA, THE CHRISTIAN LEGAL FELLOWSHIP, THE
JUSTICE CENTRE FOR CONSTITUTIONAL FREEDOMS, THE EVANGELICAL
FELLOWSHIP OF CANADA AND CHRISTIAN HIGHER EDUCATION CANADA, OUT ON
BAY STREET AND OUTLAWS, THE ADVOCATES' SOCIETY and THE CRIMINAL
LAWYERS' ASSOCIATION (ONTARIO)

Interveners

**FACTUM OF THE APPLICANTS
TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT**

March 2, 2015

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto ON M5X 1A4

Robert W. Staley (#27115J)
Derek J. Bell (#43420J)
Ranjan K. Agarwal (#49488H)

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

Lawyers for the applicants
Trinity Western University and
Brayden Volkenant

TO: BORDEN LADNER GERVAIS LLP
Barristers and Solicitors
Scotia Plaza
40 King Street West,
44th Floor
Toronto ON M5H 3Y4

Guy J. Pratte
Email: gpratte@blg.com

Nadia Effendi
Email: neffendi@blg.com

Telephone: (416) 367-6000
Facsimile: (416) 367-6749

Lawyers for the respondent
Law Society of Upper Canada

AND TO: DEPARTMENT OF JUSTICE
Ontario Regional Office
130 King Street West
Suite 3400, PO Box 36
Toronto ON M5X 1K6

Roy Lee
Email: roy.lee@justice.gc.ca

Telephone: (416) 952-2946
Facsimile: (416) 973-4328

Lawyers for the intervener
Attorney General of Canada

AND TO: MILLER THOMSON LLP
Barristers and Solicitors
700 – 9th Avenue S.W.
Suite 3000
Calgary AB T2P 3V4

Gerald Chipeur, QC
Email: gchipeur@millerthomson.com

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

Lawyers for the intervener
The Christian Legal Fellowship

AND TO: VINCENT DAGENAIS GIBSON LLP
Barristers and Solicitors
260 Dalhousie Street
Suite 400
Ottawa ON K1N 7E4

Albertos Polizogopoulos
Email: albertos@vdg.ca

Kristin Marie Barsoum Debs
Email: kristin@debslaw.ca

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

Lawyers for the intervener
The Evangelical Fellowship of Canada and Christian Higher Education Canada

AND TO: THE JUSTICE CENTRE FOR CONSTITUTIONAL FREEDOMS
Professional Corporation
#253, 7620 Elbow Drive SW
Calgary AB T2V 1K2

John Carpay
Email: jcarpay@jccf.ca

Telephone: (403) 796-8110

DOUCETTE BONI SANTORO FURGIUELE
11 - 20 Dundas Street West
Toronto ON M5G 2G8

Daniel Santoro
Email: santoro@dbsfcounsel.com

Telephone: (416) 922-7272

Lawyers for the intervener
The Justice Centre for Constitutional Freedoms

AND TO: SACK GOLDBLATT MITCHELL LLP
Barristers and Solicitors
20 Dundas Street West
Suite 1100
Toronto ON M5G 2G8

Marlys Edwardh (#15939K)
Email: medwardh@sgmlaw.com

Vanessa Payne (#34422F)
Email: vpayne@sgmlaw.com

Frances Mahon (#65613T)
Email: fmahon@sgmlaw.com

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

PAUL JONATHAN SAGUIL
66 Wellington St. West
TD Tower, PO Box 1
Toronto ON M5K 1A2

Paul Jonathan Saguil (#55360B)
Email: paul.jonathan.saguil@gmail.com

Telephone: (416) 308-1719

Lawyers for the intervener
Out on Bay Street and OUTlaws

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

Chris G. Paliare (#13367P)
Email: chris.paliareroland.com

Telephone: (416) 646-4300
Facsimile: (416) 646-4301

MARTHA MCCARTHY & COMPANY LLP
146 Davenport Road
Toronto ON M5R 1J2

Joanna Radbord (#42328W)
Email: joanna@mccarthyco.ca

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

Lawyers for the intervener
The Advocates' Society

AND TO: JOHN NORRIS
116 Simcoe Street
Suite 100
Toronto ON M5H 4E2

John Norris
Email: john.norris@simcoechambers.com

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

Lawyer for the intervener
Criminal Lawyers' Association (Ontario)

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PART I: IDENTITY OF APPLICANTS, PRIOR COURT AND RESULT

1. The key issue in dispute in this application has already been decided. In 2001, the Supreme Court of Canada held that a professional regulatory body could not refuse to accredit Trinity Western University (“TWU”) based on allegations that TWU’s Community Covenant is discriminatory, even if the professional regulatory body had a statutory duty to consider the public interest in making its decisions. The Supreme Court said:

To state that the voluntary adoption of a code of conduct based on a person’s own religious beliefs, in a private institution, is sufficient to engage s. 15 would be inconsistent with freedom of conscience and religion, which co-exist with the right to equality.

[...]

...the proper place to draw the line in cases like the one at bar is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them. Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. The BCCT, rightfully, does not require public universities with teacher education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society.

2. On April 24, 2014, the benchers of the respondent, the Law Society of Upper Canada (“LSUC”), ignoring this binding precedent, voted 28-21 to deny accreditation to TWU’s proposed law school. The effect of the LSUC’s decision is to refuse to accept applications for admission to the Ontario Bar from graduates of TWU’s proposed law school. The benchers did so without a shred of evidence that any graduates of the proposed law school would act in a discriminatory manner. The majority seeks to punish TWU and its students based solely on their sincerely-held religious beliefs.

3. In making their decision, the benchers committed the same error that the British Columbia College of Teachers (the “BCCT”) did in 2001. In addressing the BCCT’s error, the Supreme

Court of Canada explained:

Acting on those beliefs, however, is a very different matter. If a teacher in the public school system engages in discriminatory conduct, that teacher can be subject to disciplinary proceedings before the BCCT. Discriminatory conduct by a public school teacher when on duty should always be subject to disciplinary proceedings.

4. The LSUC has a remedy if students or any of its members act in a discriminatory manner: it can refuse to grant a licence on good character grounds or discipline the lawyer. It is an overreaction in the extreme to deny evangelical Christians their livelihood in the province of Ontario based on an intolerant and discriminatory assumption of how those students will practice law.

5. The applicants TWU and Brayden Volkenant, a potential TWU law school student, apply for judicial review of the LSUC's decision. As set out herein:

(a) *The LSUC Acted Beyond its Jurisdiction:* This application is about the scope of the LSUC's power to regulate in the public interest. The *Law Society Act* provides that the function of the LSUC is to ensure that Ontario lawyers meet appropriate standards of learning, professional competence and professional conduct. There is no evidence that TWU graduates will discriminate against clients, employees or the public. The Federation of Law Societies of Canada ("FLSC") has determined that graduates of TWU's proposed law school would meet national requirements for admission to the practice of law. Notwithstanding that TWU's graduates would meet the standards set by the LSUC and the FLSC, the LSUC's benchers refused accreditation because a majority of them do not approve of TWU's Community Covenant. The effect of the LSUC's decision is to impose the *Canadian Charter of Rights and Freedoms* (the "Charter") and human rights

legislation on TWU, when neither is applicable. The LSUC acted without jurisdiction in doing so.

- (b) *The LSUC's Decision is Unreasonable:* The LSUC's decision infringes the applicants' *Charter* rights. It contradicts binding Supreme Court of Canada authority involving the same educational institution and substantively the same Community Covenant. It ignores the context for the Community Covenant, including that TWU is a private university whose legislative purpose is to provide a university education with an underlying evangelical Christian philosophy and viewpoint. It has the effect of disregarding important *Charter* values, including the freedom of religion, expression and association, in favour of some of the benchers' view that the Community Covenant is discriminatory (even though the Community Covenant violates no law). The decision is a disproportionate infringement of the applicants' rights.

6. Like the Supreme Court of Canada before it, the Nova Scotia Supreme Court has agreed with TWU. In January 2015, it held that the Nova Scotia Barristers' Society incorrectly and unreasonably refused accreditation to TWU's proposed law school:

The NSBS has characterized TWU's Community Covenant as "unlawful discrimination". It is not unlawful. It may be offensive to many but it is not unlawful. TWU is not the government. Like churches and other private institutions it does not have to comply with the equality provisions of the *Charter*. It has not been found to be in breach of any human rights legislation that applies to it. Counsel for the NSBS described TWU's proposed law school as a "rogue" law school. It would be so only in the sense that its policies are not consistent with the preferred moral values of the NSBS Council and doubtless many if not a majority of Canadians. The *Charter* is not a blueprint for moral conformity. Its purpose is to protect the citizen from the power of the state, not to enforce compliance by citizens or private institutions with the moral judgments of the state.

7. The LSUC's decision should be tested this way: does the LSUC have a basis to disbar an

Ontario lawyer because he or she believes that sexual intimacy should be limited to heterosexual marriage? If the answer is no, as it surely is, then the LSUC has no basis to bar putative licensees for sharing the same beliefs.

PART II: FACTS

A. The Parties

1. Trinity Western University

8. TWU is a private, post-secondary institution in Langley, British Columbia. It was established in 1962. In 1969, the B.C. legislature enacted the *Trinity Junior College Act*.¹ The *Act* states that TWU’s education is to be provided with “an underlying philosophy and viewpoint that is Christian.”²

9. TWU was recognized as a degree-granting institution by the government of B.C. in 1979. In 1985, the B.C. legislature changed TWU’s name and authorized TWU to offer graduate degrees.³ TWU’s purpose remains the provision of a Christian post-secondary education.

10. TWU offers over 50 undergraduate and graduate programs, including professional programs in nursing, education, business and counselling psychology.⁴ Approximately 4,000 undergraduate and graduate students attend TWU.⁵

(a) TWU’s Christian Mandate

11. TWU is, and has always been, an evangelical Christian community. TWU has the

¹ SBC 1969, c 44.

² *Ibid* (as amended), s 3(2). The *Trinity Junior College Act* has been subsequently amended and is now referred to as the *Trinity Western University Act*.

³ *An act to amend the Trinity Western College Act*, SBC 1985, c 63.

⁴ Submission of TWU to LSUC, Record of Proceedings, Tab 249, page 1942. The vast majority of the facts as stated herein were made to the benchers as is set out in the evidentiary references that follow. Affidavit evidence has also been tendered to demonstrate a validly raised allegation of constitutional error: *Alghaithy v Ottawa University*, 2011 ONSC 5879 ¶29, Book of Authorities (“BOA”), Tab 1.

⁵ Trinity Western University School of Law Proposal, Record of Proceedings, Tab 31, page 238.

following Mission Statement:

The mission of Trinity Western University, as an arm of the Church, is to develop godly Christian leaders: positive, goal-oriented university graduates with thoroughly Christian minds; growing disciples of Christ who glorify God through fulfilling the Great Commission, serving God and people in the various marketplaces of life.⁶

12. TWU primarily exists to serve the portion of the Canadian population that shares its religious beliefs. A high percentage of the students who enrol at TWU identify themselves as Christians.⁷

13. TWU is committed to maintaining a campus environment in which students and faculty have the intellectual freedom to explore and discuss many contemporary social, political and religious issues. To ensure that TWU's campus environment remains conducive to the free exchange of ideas and open debate, TWU adheres to the Association of Universities and Colleges of Canada's policy on Academic Freedom.⁸

14. However, TWU is an evangelical Christian university, teaching liberal arts, sciences, and professional studies, which was founded on religious principles. TWU's curriculum is developed and taught in a manner consistent with this religious worldview.⁹

15. As expressed in its Mission Statement, TWU is an arm of the evangelical Free Church of Canada (the "EFCC"), which is a Protestant Christian denomination. TWU's university and its administration take great pride in fulfilling its primary purpose, which is to nurture and develop positive, goal-oriented university graduates with thoroughly Christian minds that will be future

⁶ Affidavit of Robert Wood, sworn August 22, 2014 (the "Wood Affidavit"), ¶16, Application Record, Tab 5, page 418.

⁷ Wood Affidavit, ¶18, Application Record, Tab 5, page 418.

⁸ Wood Affidavit, ¶10-11, Application Record, Tab 5, page 416; Trinity Western University School of Law Proposal, Record of Proceedings, Tab 31, page 244.

⁹ Wood Affidavit, ¶12, Application Record, Tab 5, page 417; Trinity Western University School of Law Proposal Record of Proceedings, Tab 31, pages 245-246.

leaders in the Christian community and beyond.¹⁰

16. An evangelical Christian philosophy of education involves more than presenting facts and knowledge. It aims to facilitate character and spiritual development in a manner consistent with evangelical Christian understandings of biblical truth. Within an evangelical Christian university, a code of conduct seeks to foster an atmosphere that is conducive to the integration of faith and learning, which is conducive to moral and spiritual growth.¹¹

17. The object of TWU is, in part, to provide evangelical Christian students with a community of peers that share their religious beliefs and values. Jessie Legaree, a TWU graduate currently studying law at the University of Toronto, testified (and was not cross-examined) on the contrast between TWU and secular, public universities as follows:

As a religious individual, I have felt that law school is generally a hostile environment for those who hold religious views. For example, professors were comfortable making disparaging remarks in class about religion; this includes invoking the name of Jesus Christ in hypotheticals. When discussing universal human rights, students and professors sought legitimacy by making clear they were Atheists. As a Christian, these remarks made me feel uncomfortable. Religion is not positively discussed in or outside of the classroom. In my law faculty, there is not a single professor who shares my evangelical Christian faith - at least not publicly. The law school ethos is generally socially progressive, with very few opportunities for socially conservative students to participate.

I was given advice by a Christian lawyer prior to entering law school to “keep your head down” and to not tell anyone that I am a Christian. I could not do that. People know I am a Christian, but it resulted in my becoming withdrawn in my law school community. Since starting law school, I have felt that I am not entirely free to discuss my beliefs and have become far more introverted. During law school orientation, students underwent mandatory instruction where we were told it is our duty to stand up to bigoted remarks; a scenario used to exemplify unacceptable conduct and the duty to intervene was a student making comments labeled “homophobic” that reflected a belief in traditional marriage. This was a clear indication that only socially progressive views would be tolerated

¹⁰ Wood Affidavit, ¶22, Application Record, Tab 5, page 420.

¹¹ Wood Affidavit, ¶14, 22-23, Application Record, Tab 5, page 417, 420; Report of Gerald Longjohn, Exhibit “C” to the Affidavit of Gerald Longjohn, sworn August 19, 2014 (the “Longjohn Affidavit”), pages 3-4, Application Record, Tab 9, page 565-566.

and of great concern to me. It made me feel nervous and isolated, unable to feel like my religious identity was welcomed within the law school community.¹²

18. At the same time, students at TWU may, and in fact do, hold and express diverse opinions on moral, ethical, and religious issues. TWU students are not subject to discipline or censure for holding or expressing opinions that diverge from TWU's stated position on moral, ethical, or religious questions. In particular, 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. Students are encouraged to discuss and debate all sorts of different viewpoints inside and outside of class in the spirit of a classic liberal arts university education. TWU, as a Christian organization and Christian community, may not agree with such opinions expressed, but its students are free to hold and express them, and such views are freely and respectfully debated and discussed.¹³

(b) Evangelical Christianity

19. Evangelical Christians are a religious subculture in Canada. A subculture is a group within a larger society that is distinctive in beliefs, behaviours, customs, language or other factors. A religious subculture is usually delineated by its religious beliefs, rituals or devotional practices, identity or moral and ideological boundaries. Evangelical Christians hold distinctive beliefs, including the authority of the Bible, the unique salvific work of Jesus Christ, the importance of the conversion experience and the importance of active faith expressed through church attendance, Bible reading, prayer and evangelism.¹⁴

¹² Affidavit of Jessie Legaree, sworn August 18, 2014 (the "Legaree Affidavit"), ¶5-6, Application Record, Tab 15, pages 618-619.

¹³ Wood Affidavit, ¶15, Application Record, Tab 5, page 417; Convocation Transcript (Mr. Kuhn), April 24, 2014, Record of Proceedings, Tab 295, pages 3045, lines 13-25.

¹⁴ Affidavit of Samuel Reimer, sworn August 19, 2014 (the "Reimer Affidavit"), ¶27-29, Application Record, Tab 11, page 565.

20. The term evangelical comes from the Greek word *euangelion*, meaning “the good news” or the “gospel.” Evangelicalism is a trans-denominational movement within Protestant Christianity. Evangelicals believe that the essence of the “good news” consists in the doctrine of salvation by grace through faith in Jesus Christ’s atonement. Evangelical Christians believe in the centrality of the conversion experience in receiving salvation, believe in the authority of the Bible as God’s revelation to humanity, and have a commitment to evangelism or sharing the Christian message with others.¹⁵

21. Evangelical Christians commonly establish and hold codes of conduct within their subculture. Those kinds of codes are common in subcultures whether they are religious or not. Sexual moral purity is a behavioural expectation and includes abstaining from sexual intimacy outside of traditional marriage, and certain behaviours thought to lead to sexual impurity. Distinctive codes of conduct increase the strength and commitment to the subculture.¹⁶

22. Evangelicalism is an engaged subculture because it does not physically remove itself from the broader culture. Members get a greater sense of their distinctiveness through interaction with non-evangelicals. That also strengthens their identity. When behaviours are different, the religious convictions that give rise to them stand out, and that enhances the importance of those convictions. Religious groups will be stronger when they create both distinction and engagement. Evangelicalism has maintained that tension, which is why it is thriving.¹⁷

23. The literature agrees that distinctive and demanding religious groups have greater strength and vitality because they are distinctive and demanding. TWU is clearly within the evangelical

¹⁵ Affidavit of Jeffrey Greenman, sworn August 26, 2014, (the “Greenman Affidavit”), ¶33-34, 37, Application Record, Tab 10, pages 587-589.

¹⁶ Reimer Affidavit, ¶31-33, 38-39, Application Record, Tab 11, pages 566-567.

¹⁷ Reimer Affidavit, ¶44-45, Application Record, Tab 11, page 569.

subculture.¹⁸

(c) The Community Covenant

24. TWU affirms that the Bible is the authoritative and divinely inspired word of God, and that people reach their fullest potential by participating in a community mutually committed to the observation of Biblical ethics and morality. This belief is foundational to TWU's approach to community development and finds its expression in the Community Covenant.¹⁹

25. All TWU students read, understand and agree to the terms of the Community Covenant. The Community Covenant is a code of conduct which embodies TWU's evangelical Christian religious values. Those values are derived from the Bible and traditional evangelical Christian beliefs on human dignity and moral conduct. These religious beliefs give rise to a code of conduct that encourages behaviour that evangelical Christians believe is in accordance with Biblical teaching and discourages behaviour that evangelical Christians believe contradicts Biblical morality.²⁰

26. Although the focus of the various proceedings involving TWU's proposed law school has focused on issues of sexual morality, the Community Covenant is much more than that. For example, students and faculty commit themselves to virtues such as love, joy, peace, patience, kindness, goodness, faithfulness, gentleness, self-control, compassion, humility, forgiveness, peacemaking, mercy and justice. The Community Covenant prohibits, amongst other things, harassment (including harassment or discrimination towards LGBT individuals), plagiarism, stealing and under-age alcohol consumption, none of which would be atypical compared to codes

¹⁸ Reimer Affidavit, ¶46, 54, Application Record, Tab 11, pages 569, 572.

¹⁹ Wood Affidavit, ¶28, Application Record, Tab 5, page 422.

²⁰ Wood Affidavit, ¶29-31, Application Record, Tab 5, pages 422-423.

of conduct at other university campuses.²¹

27. The central objection articulated by the benchers to the Community Covenant is the prohibition in the Community Covenant against “sexual intimacy that violates the sacredness of marriage between a man and a woman.”

28. The EFCC teaches that marriage is a divinely sanctioned institution carrying significant theological implications. Marriage within the evangelical Christian tradition has been defined as an exclusive, lifelong, covenantal union of male and female. It is shared between the spouses to the exclusion of all other persons. Portions of the Bible are interpreted as the foundation for that belief. Because evangelical Christians understand marriage as divinely instituted, it takes a central position in the theological understanding of the good life for human beings.²²

29. Those who are unmarried are expected to abstain from sexual relations, living chaste and celibate lives. “Same sex intercourse” is believed to be contrary to biblical teaching and therefore morally unacceptable.²³

30. These teachings about sexual morality are integral to evangelical Christian faith. Their basis and source are said to be in the authoritative texts of Scripture. Evangelical Christians also believe that these teachings are central to the Bible’s moral account of proper conduct. They believe that the Bible’s teaching, from Genesis to Revelation, is fully consistent and unwavering that sexual conduct is only morally appropriate within the boundaries of male-female marital union. Sexual behaviour is viewed as an expression of one’s fundamental loyalty or disloyalty to

²¹ TWU Community Covenant, Exhibit “C” to the Wood Affidavit, Application Record, Tab 5C, pages 441-442; Report of Gerald Longjohn, Exhibit “C” to the Longjohn Affidavit, pages 1-2, Application Record, Tab 9, pages 563-564.

²² Dr. Greenman deposes: “Evangelicals uphold the historic view of marriage championed by enduring Christian tradition...evangelicals are not innovative, but are clearly traditionalist.” As such, references to Dr. Greenman’s evidence incorporate both his evidence on historical Christianity and evangelical Christianity. Greenman Affidavit, ¶13-15, 23, 42, Application Record, Tab 10, pages 580-581, 583, 591.

²³ Greenman Affidavit, ¶24, Application Record, Tab 10, page 584.

God which is of ultimate importance in Christian faith.²⁴

31. But, importantly, TWU does not ban or prohibit admission to LGBT students or faculty or encourage discrimination of any kind against LGBT individuals.²⁵

32. TWU's community offers an environment in which sexual minorities are supported, loved, and respected. This is required by evangelical beliefs that each human being is created by God and therefore has intrinsic dignity that demands respect. Every evangelical Christian has an obligation to love their neighbor as themselves.²⁶

33. Any form of harassment or prejudicial treatment is contrary to the Community Covenant and to TWU's evangelical Christian beliefs. Consistent with evangelical Christianity, members of the TWU community are required and accountable to "treat people and ideas with charity and respect" and "demonstrate concern for the well-being of others".²⁷

34. Harassment, shaming, ostracizing, contempt, humiliation, intimidation or insults are intolerable at TWU.²⁸ Homophobic, disrespectful or discriminatory remarks or behaviour is strictly unacceptable.²⁹ As Dr. Jeffrey Greenman states: "what is sometimes called 'homophobic' behavior by Christians (*e.g.*, fear or hatred of LGBT that is expressed with hostility) has no basis in Christian doctrine and is rejected by evangelical Christians".³⁰

35. Far from being a place of harassment and prejudice, TWU is a safe haven, particularly for sexual minority students who identify as evangelical Christian and who are struggling to reconcile

²⁴ Greenman Affidavit, ¶24, 25, 30-32, 44-46, Application Record, Tab 10, pages 584-585, 587, 592-593.

²⁵ Convocation Transcript (Mr. Kuhn), April 24, 2014, Record of Proceedings, Tab 295, page 3045, lines 8-12.

²⁶ Greenman Affidavit, ¶50-52, Application Record, Tab 10, pages 595-596; Wood Affidavit, ¶37-40, Application Record, Tab 5, pages 425-426; Affidavit of Arend Strikwerda, sworn August 20, 2014 (the "Strikwerda Affidavit"), ¶38, Application Record, Tab 8, page 533; Affidavit of Iain Cook, sworn August 19, 2014 (the "Cook Affidavit"), ¶42, Application Record, Tab 14, page 609.

²⁷ Wood Affidavit, ¶37, Application Record, Tab 5, page 425.

²⁸ Wood Affidavit, ¶40, Application Record, Tab 5, page 426.

²⁹ Wood Affidavit, ¶41, Application Record, Tab 5, page 426.

³⁰ Greenman Affidavit, ¶52, Application Record, Tab 10, page 596.

their faith with their orientation. Sexual minority students have found acceptance and respect from their peers and professors. For example, Arend Strikwerda and Iain Cook testified as follows (and again, were not cross-examined):

I never felt that the Community Covenant harmed me, as a gay person, at TWU by pushing me further into the closet (or keeping me there), making me the target of homophobic slurs or harassment, making me feel isolated, affecting my self-esteem, or excluding me from TWU's community. Nothing I saw or experienced would make me feel that other sexual minorities would be harmed by TWU in these ways. In fact, such things would be contrary to the text and spirit of the Community Covenant itself.³¹

I never experienced any intimidation, hostility, discrimination, exclusion, shunning, harassment, or threats at TWU for any reason, including expressing my same-sex attractions.³²

36. TWU's values extend beyond the university. For example, Richard Green and Kelly Hart, graduates of TWU, actively provide legal advice and representation to LGBT individuals.³³

37. Codes of conduct, such as the one in place at TWU, are common within Christian universities and colleges. These codes address a range of issues from health, safety and legal issues to weapons on campus, verbal, sexual and physical harassment, and privacy and security issues. Policies also address things like plagiarism and academic dishonesty. Codes of conduct in the context of Christian schools relate to moral standards and behavioural expectations. These policies address the use of alcohol, tobacco and illegal drugs, chapel and church attendance, sexual morality and related expectations such as residence hall visitation and cohabitation policies, and policies on conflict management and violence.³⁴

38. The role of the conduct code is to clearly communicate the identity or ethos of the

³¹ Strikwerda Affidavit, ¶36, Application Record, Tab 8, page 533.

³² Cook Affidavit, ¶45, Application Record, Tab 14, page 610.

³³ Affidavit of Richard Green, sworn August 15, 2014 (the "Green Affidavit"), Application Record, Tab 12, page 587; Affidavit of Kelly Hart, sworn August 20, 2014 (the "Hart Affidavit"), Application Record, Tab 13, page 597.

³⁴ Report of Gerald Longjohn, Exhibit "C" to the Longjohn Affidavit, pages 1-2, Application Record, Tab 9C, pages 563-564.

university to campus constituents. Even students who disagree with the code of conduct can see it as an expression of the university's identity. Codes of conduct are seen as establishing a community conducive to spiritual growth in the context of Christian colleges and universities. The environments are intended to be protected from influences that are detrimental to personal spiritual growth.³⁵

39. TWU accepts students of various religious and non-religious backgrounds that wish to live and learn in an evangelical Christian environment. TWU strives to maintain an environment that appeals to individuals sharing its evangelical Christian faith. Students that wish to be part of the TWU community come to TWU knowing its mission and its foundation, regardless of their personal beliefs. The Community Covenant is a significant means of ensuring that TWU maintains its religious character, achieves its mission and continues to attract students, faculty, and staff that share its evangelical Christian religious beliefs.³⁶

40. The Community Covenant is periodically reviewed. Staff, faculty, and students have provided input in prior reviews of the Community Covenant. Because of these reviews, the Community Covenant reflects the dominant religious views of the evangelical Christian community represented and served by TWU.³⁷

41. TWU expects that individuals who choose to become members of its community will follow the Community Covenant. Accordingly, TWU does not actively seek out cases of non-compliance with the Community Covenant by its students, faculty or staff. However, there

³⁵ Report of Gerald Longjohn, Exhibit "C" to the Longjohn Affidavit, page 3, Application Record, Tab 9C, page 565.

³⁶ Wood Affidavit, ¶30, Application Record, Tab 5, page 422.

³⁷ Wood Affidavit, ¶33, Application Record, Tab 5, page 424.

may be instances where a person falls short of his or her commitment.³⁸

2. Brayden Volkenant

42. Brayden Volkenant is a graduate of TWU's Bachelor of Arts (Business) program. Brayden is an evangelical Christian. Brayden acknowledged and accepted the Community Covenant. As an evangelical Christian, he already believed in many of the values expressed in the Community Covenant.³⁹

43. Brayden intends to go to law school. Brayden's preferred school would be TWU's proposed law school. Brayden is interested in practicing law in Ontario after graduating from law school.⁴⁰ He attended at Convocation on April 24, 2014, as part of the TWU deputation.⁴¹

3. The Respondent LSUC

44. The LSUC regulates the legal profession and provision of legal services in Ontario under the *Law Society Act*.⁴² The statutory functions of the LSUC are to ensure that:

- (a) all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and
- (b) the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario.⁴³

³⁸ Wood Affidavit, ¶44, Application Record, Tab 5, page 427.

³⁹ Affidavit of Brayden Volkenant, sworn August 18, 2014 (the "Volkenant Affidavit"), ¶4, 10, 17, Application Record, Tab 6, pages 507, 508, 510.

⁴⁰ Volkenant Affidavit, ¶26, 31-32, Application Record, Tab 6, pages 511, 513.

⁴¹ Convocation Transcript (Treasurer Conway), April 24, 2014, Record of Proceedings, page 3028, lines 18-25.

⁴² RSO 1990, c L8.

⁴³ *Ibid*, s 4.1.

45. The *Act* requires the LSUC to apply certain principles:

4.2. In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:

1. The Society has a duty to maintain and advance the cause of justice and the rule of law.
2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
3. The Society has a duty to protect the public interest.
4. The Society has a duty to act in a timely, open and efficient manner.
5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized.

46. The LSUC must issue a licence to applicants who meet the qualifications and other requirements set out in the *Law Society Act* and the LSUC's by-laws.⁴⁴

47. By-Law 4 provides that applicants for a Class L1 Licence (which entitles a licensee to practice law in Ontario as a barrister and solicitor) must have a law degree from an "accredited law school", which is defined in By-Law 4 as "a law school in Canada that is accredited by the Society".⁴⁵

48. The business of the LSUC is transacted through Convocation, which is a "regular or special meeting of the benchers convened for the purpose of transacting business" of the LSUC.⁴⁶

B. TWU's Proposed Law School

49. In June 2012, TWU submitted a proposal to the FLSC's Canadian Common Law Program

⁴⁴ *Law Society Act*, *supra* note 42, s 27(3); Ontario, LSUC, *By-Law 4 – Licensing*.

⁴⁵ *By-Law 4*, *ibid*, s 7.

⁴⁶ *Law Society Act*, *supra* note 41, s 1(1).

Approval Committee (the “FLSC Approval Committee”) for a law school to open in September 2015 (later amended to September 2016).⁴⁷

50. In 2010, Canada’s law societies approved a uniform national requirement that graduates of Canadian common law programs must meet to enter law society admission programs (the “National Requirement”). The National Requirement specifies the competencies and skills graduates must have attained and the law school academic program and learning resources law schools must have in place.⁴⁸

51. The FLSC Approval Committee is mandated to review existing and proposed law school programs to determine whether they comply with the National Requirement.⁴⁹

52. During the FLSC Approval Committee’s deliberations, the FLSC established a Special Advisory Committee on Trinity Western’s Proposed School of Law (the “FLSC Special Advisory Committee”).⁵⁰

53. The FLSC Special Advisory Committee specifically considered whether the Community Covenant should be taken into account in determining whether graduates of TWU’s proposed law school should be eligible to enroll in admission programs offered by Canada’s law societies.⁵¹

54. The FLSC Special Advisory Committee concluded that if the FLSC Approval Committee decided that TWU’s proposed law school meets the National Requirement if implemented as proposed, “there will be no public interest reason to exclude future graduates of the program from

⁴⁷ Trinity Western University School of Law Proposal, Record of Proceedings, Tab 31, page 237.

⁴⁸ Federation of Law Societies of Canada, Report on Trinity Western University’s Proposed School of Law Program, ¶7, Record of Proceedings, Tab 31, page 201.

⁴⁹ Federation of Law Societies of Canada, Report on Trinity Western University’s Proposed School of Law Program, ¶9-10, Record of Proceedings, Tab 31, page 202.

⁵⁰ Federation of Law Societies of Canada, Report on Trinity Western University’s Proposed School of Law Program, ¶31-32, Record of Proceedings, Tab 31, page 206.

⁵¹ Federation of Law Societies of Canada, Report on Trinity Western University’s Proposed School of Law Program, ¶32, Record of Proceedings, Tab 31, page 206.

law society bar admission programs.”⁵²

55. The FLSC Approval Committee also concluded that, subject to certain concerns to be addressed in TWU’s future annual reports (unrelated to the Community Covenant), the program would, if implemented as proposed, meet the National Requirement and should be given preliminary approval. The FLSC Approval Committee concluded that TWU’s proposal was “comprehensive and is designed to ensure that students acquire each competency included in the national requirement.”⁵³

56. Following the FLSC Approval Committee’s preliminary approval of TWU’s proposal, TWU communicated with Canada’s 14 provincial and territorial law societies to confirm that its graduates could article and be admitted to the bar in those jurisdictions.

57. As of March 2, 2015, only regulators in B.C., Ontario and Nova Scotia have refused to accredit TWU’s proposed law school. On January 28, 2015, the Nova Scotia Supreme Court held that the Nova Scotia Barristers’ Society’s decision to refuse accreditation was *ultra vires*.⁵⁴ TWU is applying for judicial review of the Law Society of British Columbia’s decision.⁵⁵

C. The LSUC’s Decision

58. In early 2014, the Treasurer of the LSUC released a statement outlining the process that the LSUC would follow in determining whether TWU’s proposed law school would be accredited.⁵⁶

⁵² Federation of Law Societies of Canada, Special Advisory Committee on Trinity Western’s Proposed School of Law Final Report, ¶66, Record of Proceedings, Tab 32, page 498.

⁵³ Federation of Law Societies of Canada, Report on Trinity Western University’s Proposed School of Law Program, ¶47, 52-56, Record of Proceedings, Tab 31, pages 209-211.

⁵⁴ *Trinity Western University v Nova Scotia Barristers’ Society*, 2015 NSSC 25 [TWU v NSBS], BOA, Tab 2.

⁵⁵ On December 11, 2014, the British Columbia Minister of Advanced Education advised TWU that he was revoking the consent he had previously given for TWU’s law school because the members of the Law Society of British Columbia voted to refuse accreditation to TWU. TWU is applying for judicial review of the Law Society of British Columbia’s decision. The LSUC and TWU agree that the within application for judicial review should still proceed regardless of the Minister’s decision or any judicial review of that decision.

⁵⁶ Treasurer’s Public Remarks respecting TWU for February Convocation, Record of Proceedings, Tab 33, page 529.

59. The question ultimately put to Convocation was:

Given that the Federation Approval Committee has provided preliminary approval to the Trinity Western University law program in accordance with processes Convocation approved in 2010 respecting the national requirement and in 2011 respecting the approval of law school academic requirements, should the Law Society of Upper Canada now accredit Trinity Western University pursuant to section 7 of By-Law 4?⁵⁷

60. On April 10, 2014, members of Convocation discussed the TWU application and spoke to various issues raised in the submissions received by the LSUC. No vote was taken at this meeting, nor was TWU permitted to make an oral presentation.

61. Clayton Ruby, an *ex officio* benchler of the LSUC, was permitted to make submissions at the April 10th meeting.⁵⁸ Mr. Ruby is the lawyer for Trevor Loke, who is challenging the B.C. Minister of Advanced Education's prior decision to approve TWU's proposed law school. Mr. Ruby has repeatedly expressed his pre-determined position on the issue of TWU's accreditation publicly, before and during the LSUC's decision-making process, including calling TWU "bigoted".⁵⁹

62. TWU was permitted to make an oral presentation at the April 24, 2014, meeting. Further discussion took place among the benchers, after which Convocation voted on the question.⁶⁰

63. Convocation voted to reject the accreditation of TWU (and, in doing so, reject applications for admission by graduates of TWU's proposed law school) by a reported vote of 28 to 21 with one abstention.⁶¹

64. The transcripts of both sessions total 389 pages. The majority did not agree on and release

⁵⁷ Convocation Transcript (Secretary), April 10, 2014, Record of Proceedings, Tab 293, page 2847.

⁵⁸ Convocation Transcript (Mr. Ruby), April 10, 2014, Record of Proceedings, Tab 293, page 2913.

⁵⁹ Affidavit of Janet Epp-Buckingham, sworn August 20, 2014 (the "Epp-Buckingham Affidavit"), ¶8-9, Application Record, Tab 7, page 517.

⁶⁰ Convocation Transcript, April 24, 2014, Record of Proceedings, Tab 295, page 3014.

⁶¹ Convocation Transcript (Secretary), April 24, 2014, Record of Proceedings, Tab 295, page 3225, lines 6-7.

reasons for their decision. Instead, counsel for the LSUC advised the benchers that “[t]he reasons of Convocation will be provided through the transcript of both sessions, as well as the written record and, ultimately, the vote”.⁶²

65. While some benchers voted against accreditation without making a statement, the central theme among those who voted against accreditation was objection to the clause in the Community Covenant that “community members voluntarily abstain from...sexual intimacy that violates the sacredness of marriage between a man and a woman”:

The central interest, and this, in my respectful submission, is identifying what that public interest is. It’s plain it’s overwhelmingly in favour of diversity of sexual orientation and sexual relations outside of marriage. Gay marriage is embraced in this province. Common-law relationships are recognized in this province. Sex and sexuality are left to the private bedrooms of the province.⁶³ (John Campion, April 24, 2014)

I was disappointed that the reply submissions failed entirely to address the proposition that the Law Society should not accredit law schools that effectively limit or impair admission on the basis of race, creed, religious belief, gender, sexual orientation and the like because of the importance of the diverse profession and equal access to the rule of law and the cause of justice.⁶⁴ (Malcolm Mercer, April 24, 2014)

I intend to act to protect my profession today. I intend to insist that members of the LGBTTI2Q communities are part of the public, and as long as they are not protected, then accrediting TWU cannot be in the public interest.⁶⁵ (Julian Falconer, April 24, 2014)

Accreditation is outlined in our by-law 4 and it involves giving recognition and approval to the TWU law program. In other words, our sanction. In my view, we can’t turn a blind eye to the discriminatory aspects of the TWU program as embodied in the Charter. We have to consider it and we have to engage with it.⁶⁶ (Peter Wardle, April 24, 2014)

Given my analysis of the situation of LGBTQ or common-law opposite sex students who are required to sign the Covenant, my view is that the application of these provisions require a vote against accreditation.⁶⁷ (Raj

⁶² Convocation Transcript (Ms. Kristjanson), April 10, 2014, Record of Proceedings, Tab 293, page 2852, lines 4-6.

⁶³ Convocation Transcript (Mr. Campion), April 24, 2014, Record of Proceedings, Tab 295, pages 3081-3082, lines 23-25, 1-5.

⁶⁴ Convocation Transcript (Mr. Mercer), April 24, 2014, Record of Proceedings, Tab 295, page 3097, lines 18-25.

⁶⁵ Convocation Transcript (Mr. Falconer), April 24, 2014, Record of Proceedings, Tab 295, pages 3107-3108, lines 23-25, 1-2.

⁶⁶ Convocation Transcript (Mr. Wardle), April 24, 2014, Record of Proceedings, Tab 295, page 3109, lines 13-19.

⁶⁷ Convocation Transcript (Mr. Anand), April 24, 2014, Record of Proceedings, Tab 295, page 3139, lines 18-22.

Anand, April 24, 2014)

... I cannot accept that it would be in the public interest to accredit an institution such as Trinity Western, which does not accept and embrace equality among individuals who wish to practice and live a sexual orientation which might not be, quote, unquote, biblical, but is nonetheless something that deserves and requires respect and protection.⁶⁸ (Howard Goldblatt, April 24, 2014)

We are not pre-judging the students when they apply to be called to the bar. The Law Society will not inquire into their sexual orientation or personal beliefs. What we are asking is that TWU behave toward their students as law societies should and we should behave towards them when they come before us. We will not discriminate against them and we ask that they not discriminate against them either.⁶⁹ (Bradley Wright, April 24, 2014)

What hasn't been acknowledged today, and I want to do it, is that how difficult this discussion must be to gays and lesbians, who will be excluded from entrance to Trinity Western University because they will not be able to sign that Covenant and how exclusionary that is to young men and women who seek a legal career.⁷⁰ (Beth Symes, April 24, 2014)

TWU, in my opinion, cannot hide behind allegations of religious discrimination against them when the real and only discrimination is being perpetrated by TWU by the requirements of their Community Covenant.⁷¹ (Judith Potter, April 24, 2014)

66. Among those benchers who voted against accreditation, a number of benchers acknowledged that the requirement that TWU community members abstain from sexual intimacy outside of heterosexual marriage arises from genuinely-held religious beliefs.⁷²

⁶⁸ Convocation Transcript (Mr. Goldblatt), April 24, 2014, Record of Proceedings, Tab 295, pages 3147-3148, lines 15-25, 1-7.

⁶⁹ Convocation Transcript (Mr. Wright), April 24, 2014, Record of Proceedings, Tab 295, page 3152, lines 2-9.

⁷⁰ Convocation Transcript (Ms. Symes), April 24, 2014, Record of Proceedings, Tab 295, page 3170, lines 9-15.

⁷¹ Convocation Transcript (Ms. Potter), April 24, 2014, Record of Proceedings, Tab 295, page 3178, lines 5-9.

⁷² Generally, the facts presented by TWU about its religious affiliation and beliefs, including in Mr. Kuhn's statement (see Convocation Transcript (Mr. Kuhn), April 24, 2014, Record of Proceedings, Tab 295, pages 3032-3071) and in written submissions on the record (see Trinity Western University School of Law Proposal, Record of Proceedings, Tab 31, page 237; Submission of TWU to LSUC, Record of Proceedings, Tab 249, page 1939; Reply Submission of TWU to LSUC, Record of Proceedings, Tab 250, page 2667), were not at issue. See for example the statements of benchers accepting TWU's sincerely held religious beliefs: Convocation Transcript (Ms. Symes), April 24, 2014, Record of Proceedings, Tab 295, page 3170-3171, lines 20-25, 1-2; Convocation Transcript (Ms. Leiper), April 24, 2014, Record of Proceedings, Tab 295, page 3087, lines 11-22; Convocation Transcript (Mr. Lerner), April 24, 2014, Record of Proceedings, Tab 295, page 3154, lines 8-11.

67. To the extent that the majority attempted to articulate a legal rationale for voting against accreditation based on objections to the Community Covenant, the following arguments were advanced:

- (a) the Supreme Court of Canada’s 2001 decision in *Trinity Western University v British Columbia College of Teachers* (“*TWU 2001*”) is no longer binding because of intervening developments in LGBT rights;⁷³
- (b) the Community Covenant infringes the B.C. *Human Rights Code*;⁷⁴
- (c) if the LSUC accredits TWU, the LSUC will violate the Ontario *Human Rights Code*;⁷⁵ and
- (d) the benchers have a duty to consider the public interest in making accreditation decisions, and the Community Covenant is contrary to the public interest.⁷⁶

68. A common theme among those benchers who spoke in favour of accreditation of TWU’s law school was that the *TWU 2001* decision is binding on the LSUC:⁷⁷

I conclude as follows. I’ve read carefully the Supreme Court of Canada decision in *TWU*, the memorandums of John Laskin and Mahmud Jamal and substantially all of the other vast material that was before us today.

⁷³ *Trinity Western University v British Columbia College of Teachers*, 2001 SCC 31 [*TWU 2001*], BOA, Tab 3. See for example Convocation Transcript (Mr. Anand), April 10, 2014, Record of Proceedings, Tab 293, pages 2885-2888; Convocation Transcript (Mr. Leiper), April 24, 2014, Record of Proceedings, Tab 295, page 3085, lines 14-21; Convocation Transcript (Mr. MacKenzie), April 10, 2014, Record of Proceedings, Tab 293, page 2861, lines 6-17; Convocation Transcript (Ms. Rothstein), April 10, 2014, Record of Proceedings, Tab 293, pages 2935-2940; Convocation Transcript (Mr. Schabas), April 10, 2014, Record of Proceedings, Tab 293, page 2906, lines 5-14.

⁷⁴ *Human Rights Code*, RSBC 1996, c 210. See for example Convocation Transcript (Mr. Anand), April 10, 2014, Record of Proceedings, Tab 293, pages 2888-9, lines 9-25, 1-7; Convocation Transcript (Mr. Leiper), April 24, 2014, Record of Proceedings, Tab 295, pages 3090-3091, lines 22-25, 1-8; Convocation Transcript (Mr. Lerner), April 10, 2014, Record of Proceedings, Tab 293, page 2942, lines 11-17; Convocation Transcript (Ms. Potter), April 24, 2014, Record of Proceedings, Tab 295, page 3176, lines 2-10.

⁷⁵ *Human Rights Code*, RSO 1990, c H.19. See for example Convocation Transcript (Mr. Anand), April 24, 2014, Record of Proceedings, Tab 295, page 3139, lines 6-17; Convocation Transcript (Mr. Braithwaite), April 24, 2014, Record of Proceedings, Tab 295, pages 3166-3167, lines 24-25, 1-10; Convocation Transcript (Mr. Lerner), April 10, 2014, Record of Proceedings, Tab 293, page 2943, lines 2-6; Convocation Transcript (Ms. Minor), April 24, 2014, Record of Proceedings, Tab 295, pages 3155-3156, lines 21-25, 1-15; Convocation Transcript (Mr. Schabas), April 10, 2014, Record of Proceedings, Tab 293, page 2901-2902, lines 16-25, 1-6.

⁷⁶ See for example Convocation Transcript (Mr. Campion), April 24, 2014, Record of Proceedings, Tab 295, pages 3081-3082, lines 23-25, 1-16; Convocation Transcript (Mr. Goldblatt), April 24, 2014, Record of Proceedings, Tab 295, page 3147, lines 15-24; Convocation Transcript (Ms. Minor), April 10, 2014, Record of Proceedings, Tab 293, page 2928, lines 13-21.

⁷⁷ In addition to those benchers quoted below, John Callaghan and Susan McGrath spoke about *TWU 2001*: Convocation Transcript (Mr. Callaghan), April 24, 2014, Record of Proceedings, Tab 295, pages 3212-3214; Convocation Transcript (Ms. McGrath), April 24, 2014, Record of Proceedings, Tab 295, pages 3123-3124, lines 21-25, 1-17.

Although I wanted to come to the conclusion that we could not accredit TWU, I could not find a principled approach in law to come to any conclusion other than that we are required to accredit the law school.⁷⁸ (Christopher Bredt, April 24, 2014)

The limit to exercise freedom of religion lies where religious practices or beliefs could cause harm. As the Supreme Court said in TWU 2001, “The line is drawn between belief and conduct. Does the exercise of freedom of expression and religion cause objective societal harm? In this instance, is there a risk that TWU lawyers will discriminate against LGBT people or will otherwise harm them should they be called to the bar.” It does not seem to me that the focus on the likelihood of actual harm or risk of harm as a limit to rights has shifted in our jurisprudence.⁷⁹ (William McDowell, April 10, 2014)

So I ask myself the question if we don’t accredit are we applying or creating the law? The passage which I just can’t seem to get myself around comes from TWU, one, to state that the voluntary adoption of a code of conduct based on a person’s own religious beliefs in a private institution sufficient to engage section 15 would be inconsistent with freedom of conscience and religion.⁸⁰ (William McDowell, April 24, 2014)

With respect to the law, I say the Supreme Court of Canada case in the Trinity Western and Teachers case governs. It was, in fact, the law and the submissions about the law at this table and in all of the writings and documents that we had to review that persuaded me that we had to accredit.⁸¹ (Barbara Murchie, April 24, 2014)

69. As described below, the minority perspective was correct as a matter of law.

PART III: ISSUES, LAW AND ARGUMENT

A. ISSUES

70. The following issues are to be addressed in this application for judicial review:
- (a) the standard of review is reasonableness;
 - (b) the LSUC’s decision is *ultra vires* the LSUC’s statutory authority;

⁷⁸ Convocation Transcript (Mr. Bredt), April 24, 2014, Record of Proceedings, Tab 295, pages 3119-3120, lines 22-25, 1-5.

⁷⁹ Convocation Transcript (Mr. McDowell), April 10, 2014, Record of Proceedings, Tab 293, pages 2871-2872, lines 17-25, 1-3.

⁸⁰ Convocation Transcript (Mr. McDowell), April 24, 2014, Record of Proceedings, Tab 295, page 3205, lines 11-18.

⁸¹ Convocation Transcript (Ms. Murchie), April 24, 2014, Record of Proceedings, Tab 295, page 3140, lines 13-18.

- (c) the LSUC's decision is unreasonable in that it falls outside the range of possible, acceptable outcomes;
- (d) the LSUC's decision is biased; and
- (e) the appropriate remedy in this case is that this Court should order that TWU's proposed law school be approved.

B. LAW AND ARGUMENT

1. The Standard of Review is Reasonableness

71. Convocation's decision was a discretionary decision of an administrative tribunal. Therefore, the presumptive standard of review is reasonableness.⁸²

72. On judicial review at the reasonableness standard, courts are concerned with justification, transparency and intelligibility within the decision-making process. The decision must fall within a range of possible, acceptable outcomes that are defensible in respect of the facts and law.⁸³

73. The range of possible, acceptable outcomes will expand or contract depending on the context of the particular type of decision making involved and all relevant factors. If there is no real dispute on the facts, the range of reasonable outcomes is much narrower.⁸⁴

74. The legal test established in *Doré v Barreau du Québec* is:

- (a) *First*, the decision-maker should first consider the statutory objectives being used to justify the infringement.

⁸² *Doré v Barreau du Québec*, 2012 SCC 12 at ¶45 [*Doré*], BOA, Tab 4.

⁸³ *Dunsmuir v New Brunswick*, 2008 SCC 9 at ¶47, BOA, Tab 5.

⁸⁴ *Mills v Ontario (Workplace Safety and Insurance Appeals Tribunal)*, 2008 ONCA 436 at ¶22, BOA, Tab 6.

(b) *Second*, the decision-maker should ask how the *Charter* value at issue will best be protected in view of the statutory objectives.⁸⁵

75. In the *Charter* context, the reasonableness analysis centres on proportionality. If the decision disproportionately impairs the relevant *Charter* guarantee, it is unreasonable. If, on the other hand, it reflects a proper balance of the statutory objectives with *Charter* protection, it is reasonable. In assessing whether the impugned decision disproportionately interferes with the applicants' *Charter* rights, it is useful to "integrate" the *Oakes* framework.⁸⁶

(a) The LSUC's Statutory Objective

76. As set out above, the statutory objective of the LSUC relevant to this application is to ensure that "all persons who practise law in Ontario ... meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide."⁸⁷

77. The LSUC is required to apply certain principles in carrying out its statutory objective, including:

- (a) a duty to maintain and advance the cause of justice and the rule of law;
- (b) a duty to act so as to facilitate access to justice for the people of Ontario; and
- (c) a duty to protect the public interest.⁸⁸

78. The LSUC's decision infringes the applicants' religious, associational and expressive freedoms and Brayden's equality rights. The speeches given by those in the majority attempt to

⁸⁵ *Doré*, *supra* note 82 at ¶54-56, BOA, Tab 4.

⁸⁶ *Ibid* at ¶57, BOA, Tab 4.

⁸⁷ *Law Society Act*, *supra* note 42, s 4.1.

⁸⁸ *Ibid*, s 4.2.

justify infringement on the basis that the Community Covenant discriminates against LGBT individuals, and that such alleged discrimination is contrary to the public interest.

79. Nothing in the LSUC's statutory functions requires it to consider the religious or personal beliefs of either licensees or the law school that the licensee attended. The only criteria for admission to the profession is whether licensees meet an appropriate standard of "learning, professional competence and professional conduct".⁸⁹ The LSUC has effectively delegated this function, at least with respect to the accreditation of law school education for the purposes of licensing, to the FLSC Approval Committee.⁹⁰ There is no dispute that graduates of TWU's proposed law school meet the National Requirement and would meet the LSUC's standard for "learning, professional competence and professional conduct".

(b) Charter Values at Issue

80. Even though the Community Covenant does not infringe the *Charter*, the B.C. *Human Rights Code* or the Ontario *Human Rights Code*, the LSUC's decision unreasonably focuses on only one *Charter* value: equality rights based on sexual orientation.⁹¹

81. The LSUC ignored other *Charter* values, including:

- (a) the freedom of religion, thought, belief, opinion, expression and association of TWU and its students; and
- (b) the equality rights of TWU's students.

⁸⁹ *Law Society Act*, *supra* note 42, s 4.1.

⁹⁰ Federation of Law Societies of Canada, Report on Trinity Western University's Proposed School of Law Program, ¶5-10, Record of Proceedings, Tab 31, pages 201-202.

⁹¹ TWU is not subject to the *Charter*: see *TWU 2001*, *supra* note 73 at ¶25, BOA, Tab 3. TWU is not subject to the British Columbia *Human Rights Code* as s 41(1) accommodates a religious organization that prefer adherents of its religious constituency. TWU is not subject to the Ontario *Human Rights Code* as it applies only in the province of Ontario and, in any event, the Ontario *Code* accommodates religious institutions and organizations that are primarily engaged in serving the interests of religious persons.

82. Even if the rights of LGBT students are relevant to or engaged by the LSUC’s statutory objective, the LSUC preferred those values over TWU’s and its students’ rights and values. The potential conflict should be resolved through the “proper delineation of the rights and values involved”. Neither right is absolute.⁹²

2. The LSUC’s Decision is *Ultra Vires* the LSUC’s Statutory Authority

83. The LSUC’s jurisdiction relates singularly to its regulation over individual lawyers and applicants for the licensing process.⁹³ The function of LSUC is to ensure that lawyers meet appropriate “standards of learning, professional competence and professional conduct.”⁹⁴ As such, the *Law Society Act* does not grant the LSUC the authority to regulate law schools except as that regulation relates to lawyers or applicants.

84. In carrying out its function, including the accreditation of law schools for the purposes of licensing prospective lawyers, the LSUC is entitled to consider its duty to “protect the public interest”. The LSUC may act in the “public interest” with respect to its jurisdiction over individual lawyers and applicants, but the concept of “public interest” does not broaden its authority or function.⁹⁵ The term “public interest” must be viewed through the lens of the legislative provisions at issue.⁹⁶

85. The LSUC’s jurisdiction is focused on ensuring that lawyers are, in a word, *competent*. This is reflected in the *Law Society Act*,⁹⁷ the LSUC’s 1994 *Role Statement* (which states that the LSUC has a public obligation to “ensure that the people whom it admits to membership and on

⁹² *TWU 2001*, *supra* note 73 at ¶29, BOA, Tab 3.

⁹³ The *Law Society Act* provides for the regulation of licensees, defined as: (a) a person licensed to practise law in Ontario as a barrister and solicitor, or (b) a person licensed to provide legal services in Ontario. It also allows LSUC jurisdiction over applicants for the licensing process and those holding themselves out as licensees or otherwise providing legal services without a license.

⁹⁴ *Law Society Act*, *supra* note 42, s 4.1

⁹⁵ *Stewart v Canadian Broadcasting Corp*, 1997 CanLII 12318 (Ont Ct (Gen Div)) at ¶223-230, BOA, Tab 7.

⁹⁶ *Ontario (Public Safety and Security) v Criminal Lawyers’ Association*, 2010 SCC 23 at ¶43-56, esp. ¶46, BOA, Tab 8.

⁹⁷ *Law Society Act*, *supra* note 42.

whom it confers the right to practice law, are indeed fit to practice and competent to offer legal services”),⁹⁸ the 2005 LSUC’s Tribunals Task Force Report to Convocation,⁹⁹ and the *Rules of Professional Conduct*.¹⁰⁰ As such, the LSUC’s public interest jurisdiction must be related to ensuring that lawyers have law degrees that meet the “standards of learning”. The FLSC has determined that TWU’s proposed law school would meet such standards. None of the majority of the benchers referred to any evidence or made any argument to the contrary.

86. It is well-established that the power of administrative tribunals to act in the public interest “is not unlimited”.¹⁰¹ The LSUC’s public interest jurisdiction does *not* extend to:

- (a) The regulation of lawyers’ beliefs, even if they are discriminatory. As long as an Ontario lawyer does not *act* on such beliefs (which could violate the *Rules of Professional Conduct*), he or she is entitled to hold them. Indeed, that limitation is consistent with the LSUC’s duty to maintain and advance the rule of law, which includes the freedom of expression and thought and religious equality.¹⁰²
- (b) The regulation of law schools. There is nothing in the *Law Society Act* or the By-laws that entitle the LSUC to make rules regarding law schools. The LSUC’s regulation of the hiring of law students, for example, is manifested through its jurisdiction over lawyers not law schools or students themselves.¹⁰³

⁹⁸ LSUC, *Role Statement* (Oct. 27, 1994), s 5.3 as cited in “TWU Accreditation Decision – Discretion and Public Interest Opinion (Cavalluzzo),” Record of Proceedings, Tab 246, page 1864.

⁹⁹ Tribunals Task Force, Report to Convocation – Final Report (May 26, 2005), as cited in “TWU Accreditation Decision – Discretion and Public Interest Opinion (Cavalluzzo),” Record of Proceedings, Tab 246, page 1866.

¹⁰⁰ Ontario, LSUC, *Rules of Professional Conduct*, s 3.1.

¹⁰¹ *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at ¶45, BOA, Tab 9.

¹⁰² The government cannot regulate thought. See for example *R v Sharpe*, 2001 SCC 2 at ¶108-110, 115, BOA, Tab 10.

¹⁰³ The *Law Society Act* provides for the regulation of licensees, defined as: (a) a person licensed to practise law in Ontario as a barrister and solicitor, or (b) a person licensed to provide legal services in Ontario. It also allows the LSUC jurisdiction over applicants for the licensing process and those holding themselves out as licensees or otherwise providing legal services without a license.

(c) The extraterritorial regulation of law schools outside of the province. It is well-established that a province—or its subordinates—has no legislative competence to legislate extraterritorially. “Order in the federation” would be undermined if every provincial jurisdiction took it upon itself to regulate aspects of post-secondary education—in the name of equality values—in relation to its own residents at the expense of otherwise provincially-regulated universities.¹⁰⁴

87. None of the benchers articulated any concern over potentially discriminatory conduct by TWU’s students upon being admitted to the Ontario bar. None of the benchers articulated any concern over TWU’s proposed curriculum or the extent to which graduates of TWU would be incompetent to practice law in Ontario. Rather, under the guise of the “public interest”, a majority of the benchers articulated a disagreement with the Community Covenant and expressed a view that the promulgation of the Community Covenant by TWU—a body over which the benchers have no jurisdiction to regulate—was discriminatory. But that determination is within the regulatory purview of the Province of British Columbia, not the benchers. As recognized by the Supreme Court, the Province of British Columbia made a conscious decision to *accommodate* religious freedom by exempting religious institutions such as TWU from portions of that province’s *Human Rights Code*.¹⁰⁵

88. To use the parlance of constitutional law, the *pith and substance*¹⁰⁶ of the LSUC’s decision is to impose the B.C. *Human Rights Code* on TWU, in circumstances where the legislature of B.C. has expressly determined that TWU and other religious institutions are partially exempt from that statute. The pith and substance of the LSUC’s decision has nothing to do with any of the graduates

¹⁰⁴ *Insurance Corporation of British Columbia v Unifund Assurance Company*, 2003 SCC 40 at ¶50-51 [ICBC], BOA, Tab 11.

¹⁰⁵ *TWU 2001*, *supra* note 73 at ¶25, BOA, Tab 3.

¹⁰⁶ *Reference re Securities Act*, 2011 SCC 66 at ¶63, BOA, Tab 12.

of TWU or their competence as lawyers to practice law in Ontario, but rather, seeks to punish the graduates for a decision taken by TWU—a decision over which the LSUC has no jurisdiction whatsoever.¹⁰⁷ The LSUC could not seek to regulate law schools in Ontario in this manner, and it certainly cannot seek to regulate law schools in other provinces, given the territorial limitation on provincial power.

89. By focusing solely on the acts of the institution, divorced from the actions or prospective actions of its students, the benchers acted as *de facto* legislators in the province of British Columbia. Or, put another way, the B.C. legislature has made the decision to accommodate religious beliefs by exempting religious institutions from portions of B.C.’s *Human Rights Code*. The majority of benchers have significantly impaired the B.C. legislature’s role in the name of the public interest.¹⁰⁸ The “public interest” does not extend so far.

90. The Nova Scotia Supreme Court came to the same conclusion with respect to the Nova Scotia Barristers’ Society:

The NSBS has no authority whatsoever to dictate directly what a university does or does not do. It could not pass a regulation requiring TWU to change its Community Covenant any more than it could pass a regulation purporting to dictate what professors should be granted tenure at the Schulich School of Law at Dalhousie University, what fees should be charged by the University of Toronto Law School, or the admissions policies of McGill. The legislation, quite sensibly, does not contain any mechanism for recognition or enforcement of NSBS regulations purporting to control how university law schools operate because it was never intended that they would be subject to its control. If it did, the operations of every law school in the country would be subject to the varying requirements of, potentially, 14 law societies. Each could require, for its purposes, that harassment policies reflect its protocols and the human rights legislation in its own jurisdiction, or require admission policies that prefer the equity-seeking group that each law society

¹⁰⁷ See *Law Society Act*, *supra* note 42, s 41. The determination of “professional competence” in the *Law Society Act* is entirely conduct-based.

¹⁰⁸ *ICBC*, *supra* note 104 at ¶50-51, BOA, Tab 11; *Constitution Act, 1867* (UK), 30 & 31 Vict c 3.

determines has been most historically disadvantaged.¹⁰⁹

91. The LSUC's duty to protect the public interest may entitle it to consider equality concerns in so far those concerns are manifested by actions and conduct and relate to its jurisdiction over lawyers and applicants. It does not entitle the LSUC to prejudicially assume that all law graduates of TWU will act in a discriminatory manner, or worse, seek to punish law graduates of TWU because of a decision taken by TWU over which the LSUC has no jurisdiction to regulate.

3. The LSUC's Decision is Unreasonable

(a) Overview

92. The statutory objective of the LSUC is to ensure that Ontario lawyers meet appropriate standards of learning, professional competence and professional conduct. The LSUC's purpose is to make sure that lawyers are appropriately educated, competent and ethical.

93. In regulating standards for learning, competence and professional conduct, the LSUC has a duty to protect the public interest. Here, the LSUC relies on its interpretation of the "public interest" to justify the infringement of the applicants' religious freedoms and Brayden's equality rights.

94. The LSUC's decision is unreasonable because it equates LGBT equality rights (even though no such right has been infringed) with the public interest in order to justify the infringement of the applicants' rights.

(b) The *TWU 2001* Decision

95. The Supreme Court of Canada's *TWU 2001* decision is binding on the LSUC. It provides a

¹⁰⁹ *TWU v NSBS*, *supra* note 54 at ¶174, BOA, Tab 2.

framework for analyzing the competing rights in this application, and must be adhered to. As earlier stated by the Supreme Court:

It is fundamental to the due administration of justice that the authority of decisions be scrupulously respected by all courts upon which they are binding. Without this uniform and consistent adherence the administration of justice becomes disordered, the law becomes uncertain, and the confidence of the public in it undermined. Nothing is more important than that the law as pronounced...and even at the risk of that fallibility to which all judges are liable, we must maintain the complete integrity of relationship between the courts.¹¹⁰

96. The LSUC and this Court may only ignore binding precedent if a new legal issue is raised, or if there is a significant change in the circumstances or evidence.¹¹¹ Neither is the case here.

97. The issue in *TWU 2001* was whether the decision of the BCCT to deny approval to TWU's Bachelor of Education program because of an earlier version of the Community Covenant was reasonable. Although the regulator is different, the substrata of the cases are the same: the applicable regulator declined to approve TWU's educational program because it claimed that the Community Covenant's prohibition on sex outside of heterosexual marriage was discriminatory against LGBT individuals and, therefore, not in the public interest. The *2001 TWU* decision is binding on the LSUC and this Court.

98. The Supreme Court of Canada found against BCCT, holding as follows:

- (a) BCCT had jurisdiction to consider discriminatory practices in dealing with TWU's application;¹¹²
- (b) TWU's admission policy alone is not sufficient to establish discrimination, and refusing to accredit TWU graduates based on the admission policy infringes their freedom of

¹¹⁰ *Woods v. The King*, [1951] SCR 504 at 515, BOA, Tab 13.

¹¹¹ *Bedford v Canada (Attorney General)*, 2013 SCC 72 at ¶44, BOA, Tab 14.

¹¹² *TWU 2001*, *supra* note 73 at ¶14, BOA, Tab 3.

conscience and religion and freedom of association;¹¹³

- (c) although BCCT may consider the *Charter* or *Code* when deciding whether it would be in the public interest to allow teachers to be trained at TWU, BCCT must also consider issues of religious freedom;¹¹⁴
- (d) any potential conflict should be resolved through the proper delineation of the rights and values involved;¹¹⁵
- (e) BCCT should have considered the exemption for TWU in the *Code* and the burden on evangelical Christians if approval was denied;¹¹⁶
- (f) the Community Covenant is insufficient by itself to support the conclusion that TWU graduates would exhibit intolerant behaviour—there was no evidence of a detrimental impact on the school system;¹¹⁷ and
- (g) many universities have traditions of religious affiliations and religious public education rights are constitutionally protected.¹¹⁸

(c) The LSUC’s Decision Infringes the Applicants’ *Charter* Rights

99. The decision has the effect of violating the applicants’ *Charter* rights, including the applicants’ freedom of religion, freedom of expression and freedom of association and Brayden’s equality rights.

¹¹³ *Ibid* at ¶25, 32, BOA, Tab 3.

¹¹⁴ *Ibid* at ¶26-28, BOA, Tab 3.

¹¹⁵ *Ibid* at ¶29, BOA, Tab 3.

¹¹⁶ *Ibid* at ¶32, BOA, Tab 3.

¹¹⁷ *Ibid* at ¶33, BOA, Tab 3.

¹¹⁸ *Ibid* at ¶34, BOA, Tab 3.

(i) **The LSUC’s decision infringes the applicants’ sincerely-held religious belief.**

100. The test for religious freedom is whether the claimant has a sincerely-held religious belief.¹¹⁹

101. In order to meet this test, all that is required is that TWU have a practice or belief that calls for a “particular line of conduct ... irrespective of whether a particular practice or belief is required by official religious dogma...”¹²⁰

102. In *TWU 2001* it was not disputed that the Community Covenant was in accordance with sincerely-held religious beliefs. Similarly, in the present case, the unchallenged and uncontradicted expert evidence of Dr. Gerald Longjohn and Dr. Greenman is that the beliefs expressed in the Community Covenant have a nexus with evangelical Christianity and TWU, its students and its faculty are sincere in their beliefs.¹²¹ The Nova Scotia Supreme Court has found, on the same evidence, that the decision of the Nova Scotia Barristers’ Society denying accreditation to TWU infringed the applicants’ religious freedom.¹²²

103. There can be no serious dispute that religious freedom is engaged in this case. The test for an infringement of a sincerely-held religious belief is whether there has been or will be an interference with that belief that prevents the claimant from acting in accordance with his or her religious beliefs in a manner that is more than trivial or insubstantial.¹²³ Any burden that is “capable of interfering with religious belief or practice” infringes section 2(a) of the *Charter*.¹²⁴

¹¹⁹ *Syndicat Northcrest v Amselem*, 2004 SCC 47 at ¶56, BOA, Tab 15.

¹²⁰ *Ibid* at ¶56, BOA, Tab 15.

¹²¹ Report of Gerald Longjohn, Exhibit “C” to the Longjohn Affidavit, pages 5-9, Application Record, Tab 9C, pages 567-571; Greenman Affidavit, ¶58-60, Application Record, Tab 10, pages 598-599.

¹²² *TWU v NSBS*, *supra* note 54 at ¶230-237, BOA, Tab 2.

¹²³ *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at ¶32, BOA, Tab 16.

¹²⁴ *Ibid* at ¶34, BOA, Tab 16.

104. The LSUC refused to accredit TWU on the basis of objections to aspects of the Community Covenant. The effect of the LSUC's decision is to deny licences to TWU's graduates, which will seriously impair TWU's ability attract and retain students who may want to practice law in Ontario. The freedom of religion is "not accommodated if the consequence of its exercise is the denial of the right of full participation in society."¹²⁵

105. Members of TWU's community rely on the Community Covenant and TWU's religious community to remain faithful to their religious convictions, pursue their spiritual goals and develop a mature Christian faith. Forcing TWU to change its religious character, or forcing evangelical Christians who want to study law at TWU to study at a secular law school because TWU's accreditation is refused, would hinder and interfere with the ability of the members of its religious community to practice their religion.¹²⁶

(ii) The LSUC's decision is discriminatory.

106. The test for determining whether Brayden's section 15 equality rights have been breached is:

- (a) does the impugned action create a distinction based on a prohibited ground; and
- (b) if so, does the distinction create a disadvantage by perpetuating prejudice or stereotyping – in other words, if there is a distinction, is it discriminatory?¹²⁷

107. Brayden is an evangelical Christian, which is a protected ground of discrimination. The uncontradicted evidence of Dr. Longjohn and Dr. Greenman is that the Community Covenant articulates and implements the religious beliefs of the evangelical Christian community served by

¹²⁵ *TWU 2001*, *supra* note 73 at ¶35, BOA, Tab 3.

¹²⁶ Volkenant Affidavit, ¶17-22, Application Record, Tab 6, page 510-511; Strikwerda Affidavit, ¶19, Application Record, Tab 8, page 530.

¹²⁷ *Quebec (Attorney General) v A*, 2013 SCC 5 at ¶162, BOA, Tab 17.

TWU.¹²⁸

108. The LSUC's decision prevents Brayden from applying to the LSUC for a licence to practice law in Ontario, notwithstanding there is no evidence that he does or will discriminate against LGBT individuals.

109. The LSUC's decision perpetuates the prejudice and stereotyping of evangelical Christians as backward, homophobic, mindless, insecure, cultish and "religious wackos". It suggests that evangelical Christians' religious beliefs regarding same-sex relationships are less worthy of protection (or as bencher Avvy Go explained, TWU's position is nothing more than a claim of "reverse discrimination", which she says should be rejected out of hand).¹²⁹

110. During Convocation, TWU's President Bob Kuhn noted the negative response to TWU's proposed law school from lawyers and others. He quoted some of the comments that TWU had received:

I quote, "In keeping with biblical and TWU ideals, TWU should go to hell." Someone referred to Trinity Western as Taliban West. One commentator said, "Screw your religious delusions and your pathetic fantasy of a God. Who are these TWU wackos?"

Another commentator said, "They can't practice their contempt, backwardness and homophobia here." Somebody else said, "The mindless collectives would be the religious ones. People who can't think for themselves, but instead subscribe to a belief system made up by the desert tribesmen 2500 years ago. This is just another example of hypo-Christian bigotry. Want to hand out law degrees in the bizarre world of fairy tales? Then practice law in the same world and keep your narrow minded faith-based BS away from the real world."

...

"The beliefs of racists, sexists, neo-Nazis are just as deeply held as those of homophobes. Their beliefs are just as sincere as those of Trinity. It's no

¹²⁸ Report of Gerald Longjohn, Exhibit "C" to the Longjohn Affidavit, pages 5-9, Application Record, Tab 9C, pages 567-571; Greenman Affidavit, ¶58-60, Application Record, Tab 10, pages 598-599.

¹²⁹ Convocation Transcript (Ms. Go), April 24, 2014, Record of Proceedings, Tab 295, page 3144, lines 3-5.

surprise that evangelical hate group, Trinity, will continue to attack gay rights, cult-like intrusion into the lives of students. Time to join the 21st century, Mr. Kuhn. Why would anyone in their right mind want to go to this outdated and bigoted school? Christianity is a cult that needs to be abandoned, and let's not stop there. Abandon all the rest of the religious cults and just start over. This kind of idiocy, discrimination and religious nuttery is religion's bullshit tied up with a silk ribbon. I would have second thoughts of hiring a person who had been hoodwinked their entire life into believing all that crap."

Or as one lawyer put it in a Facebook post, "Trinity Western University is a wacko fundamentalist Christian university with homophobic policies, but I'm encouraged by the fact that the voices for justice are increasingly drowning out the voices of bigotry and ignorance."¹³⁰

111. In *TWU 2001*, the Supreme Court of Canada recognized the disadvantage to TWU students created by the regulator's refusal to accredit TWU:

There is no denying that the decision of the BCCT places a burden on members of a particular religious group and in effect, is preventing them from expressing freely their religious beliefs and associating to put them into practice. If TWU does not abandon its Community Standards, it renounces certification and full control of a teacher education program permitting access to the public school system. Students are likewise affected because the affirmation of their religious beliefs and attendance at TWU will not lead to certification as public school teachers unless they attend a public university for at least one year.¹³¹

112. Although many of the benchers complained of the "impossible" choice that LGBT students face if they apply to TWU, Brayden's choice is even *more* impossible. As recognized by the Supreme Court of Canada in *TWU 2001*, either Brayden enrolls at TWU and foregoes practicing in Ontario (notwithstanding that he would otherwise meet the LSUC's standards for education, competency and professionalism) or he enrolls in a secular law school (which would not be his choice) and is effectively punished for his sincerely-held religious belief. Other students have a choice of law schools consistent with their beliefs, and the ability to practice law thereafter. Brayden has no such choice.

¹³⁰ Convocation Transcript (Mr. Kuhn), April 24, 2014, Record of Proceedings, Tab 295, pages 3037-3039.

¹³¹ *TWU 2001*, *supra* note 73 at ¶31, BOA, Tab 3.

113. The discriminatory impact of the decision is laid bare by this scenario: if Brayden enrolled in an Ontario law school, he would still hold the religious beliefs manifested in the Community Covenant but, of course, he would now be eligible for admission to the Ontario Bar notwithstanding those beliefs. If the LSUC cannot disbar lawyers who hold the same religious beliefs as Brayden, or require public law schools to screen out applicants who hold such beliefs, it is unjust to prejudice Brayden for choosing a private university that holds the same beliefs.¹³²

(iii) The LSUC’s decision infringes the applicants’ freedom of expression.

114. Section 2(b) entitles everyone to freedom of “thought, belief, opinion and expression.” Free expression provides “individual self-fulfillment, finding the truth through the open exchange of ideas, and the political discourse fundamental to democracy.” If any activity conveys or attempts to convey a meaning, it has expressive content and it *prima facie* falls within the scope of the section 2(b) protection.¹³³

115. Under section 2(b) of the *Charter*, TWU as an institution is protected.¹³⁴ Individuals, such as TWU’s students, are also protected. The Supreme Court of Canada has said that the denial of professional accreditation solely on the basis of the Community Covenant places “a burden on members of a particular religious group and in effect, is preventing them from *expressing freely their religious beliefs...*”¹³⁵

116. The LSUC’s decision infringes this free expression of religious belief, and interferes with TWU’s ability to express the collective evangelical views of its religious community.

¹³² *Ibid* at ¶36, BOA, Tab 3.

¹³³ *R v Sharpe*, *supra* note 102 at ¶23, 141, BOA, Tab 10.

¹³⁴ *Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 SCR 927 [*Irwin Toy*], BOA, Tab 18.

¹³⁵ *TWU 2001*, *supra* note 73 at ¶32 [emphasis added], BOA, Tab 3.

117. The Community Covenant reflects TWU’s identity and is a significant means by which TWU maintains a unique environment to provide post-secondary education with an underlying Christian philosophy.¹³⁶ Even students that disagree with the sexual morality portions of the Community Covenant acknowledge its important expressive content.¹³⁷

118. The private expression embodied in the Community Covenant, between people and an institution who share common beliefs and values articulated within it, is protected expression under section 2(b) of the *Charter*, even though some people might otherwise find it offensive. Freedom of expression is guaranteed so that “everyone can manifest their thoughts, opinions, beliefs, indeed all expressions of the heart and mind, however unpopular, distasteful or contrary to the mainstream.”¹³⁸

119. “Freedom of religious speech and the freedom to teach or share religious beliefs are unlimited, except by the discrete and narrow requirement that this not be conveyed through hate speech.”¹³⁹

(iv) The LSUC’s decision infringes the applicants’ freedom of association.

120. The section 2(d) right to freedom of association is the “freedom to combine together for the pursuit of common purposes or the advancement of common causes.”¹⁴⁰ Freedom of association protects not only the right to associate, but also the right to associational *activity* that specifically relates to other constitutional freedoms, including the freedom of religion.¹⁴¹

121. The “fundamental purpose” of the freedom of association is to “to protect the individual

¹³⁶ Report of Gerald Longjohn, Exhibit “C” to the Longjohn Affidavit, page 3, Application Record, Tab 9C, page 565.

¹³⁷ Strikwerda Affidavit, ¶20, 34, Application Record, Tab 8, pages 530, 533.

¹³⁸ *Irwin Toy*, *supra* note 134 at 968, BOA, Tab 18.

¹³⁹ *Whatcott v Saskatchewan Human Rights Tribunal*, 2013 SCC 11 at ¶97, BOA, Tab 19.

¹⁴⁰ *Reference re Public Service Employee Relations Act (Alberta)*, [1987] 1 SCR 313 at 334 [*Alberta Reference*], BOA, Tab 20.

¹⁴¹ *Mounted Police Association of Ontario v Canada (Attorney General)*, 2015 SCC 1 at ¶33 [*Mounted Police*], BOA, Tab 21.

from ‘state-enforced isolation in the pursuit of his or her ends’.”¹⁴² It protects marginalized groups and makes possible a more equal society.

122. The test to determine if there has been a breach of section 2(d) of the *Charter* is whether a government law or action would substantially impair the ability of individuals to pursue shared goals in concert.¹⁴³

123. The LSUC’s decision to refuse accreditation to TWU’s proposed law school on the basis of the Community Covenant creates a barrier to Christian legal education based exclusively on the religious beliefs embodied in the Community Covenant. As such, it would constitute a substantial interference that would make it impossible to meaningfully exercise the right of TWU and its students to associate, to put their beliefs into practice, and to pursue their shared goals.

124. TWU’s primary collective associational purpose that is protected by section 2(d) is to engage education (in this case, legal studies) within a Christian philosophy. Agreeing to the Community Covenant is a means by which individuals voluntarily adopt a religious code of conduct based on evangelical Christian beliefs in order to participate in a community that shares, respects, and honours those beliefs. As Iain Cook testified:

In my experience, having lived in many different communities throughout my life, both religious and non-religious, I am convinced that TWU’s Christian community is a rare and valuable thing. I generally felt very secure and valued within TWU’s community and by other community members. It was a safe and comforting environment to practice my Christian beliefs.¹⁴⁴

125. A refusal based on some benchers’ distaste of the religious beliefs of TWU’s community would place a burden on those wishing to attend an evangelical Christian law school in Canada,

¹⁴² *Mounted Police*, *ibid* at ¶35, BOA, Tab 21.

¹⁴³ *Ontario (Attorney General) v Fraser*, 2011 SCC 20 at ¶64, BOA, Tab 22.

¹⁴⁴ Cook Affidavit, ¶22, Application Record, Tab 14, page 606.

not because they are unqualified, but simply because they have associated with TWU and its collective practice of religion, as defined in the Community Covenant. It would substantially interfere with the ability of individuals like Brayden “to interact with, support, and be supported by their fellow humans in the varied activities in which they choose to engage”.¹⁴⁵ Again, the Supreme Court of Canada has said that denying accreditation to TWU solely because of the Community Covenant prevents evangelical Christians from “associating” to put their religious beliefs “into practice”.¹⁴⁶

126. Individuals cannot be considered “free to work in concert” if a regulator that disagrees with their goals, objectives, or beliefs is permitted to place undue burden on TWU’s religious community by denying it the ability to achieve common goals in concert, solely on the basis that its members hold and adhere to unpopular beliefs.

(d) The Community Covenant’s Context

127. The LSUC’s decision unreasonably ignores or negates important contextual facts that it ought to have considered when balancing the competing rights in this case. These include:

- (a) TWU has been subject to legislative oversight since 1969. At no time has the B.C. government suggested that a private Christian university is inconsistent with the public interest. In fact, the B.C. legislature has passed a number of statutes that confirm TWU’s religious mission and character;
- (b) TWU is a private institution and not subject to the *Charter* or, more specifically, the constitutional obligation not to discriminate;

¹⁴⁵ *Alberta Reference*, *supra* note 140 at 366, BOA, Tab 20.

¹⁴⁶ *TWU 2001*, *supra* note 73 at ¶32, BOA, Tab 3.

- (c) TWU is accommodated under the B.C. *Human Rights Code*—this accommodation is intended to promote religion, the freedom of association and equality;
- (d) the decision is a disproportionate infringement of the applicants’ rights;
- (e) TWU does not deny admission to LGBT individuals, and the evidentiary record discloses that LGBT students have attended TWU and agreed to the Community Covenant; and
- (f) the deleterious effects of the decision outweigh the salutary benefits (if any).

(i) TWU, as a private, Christian university, is in the public interest

128. Despite the suggestion of at least one bencher that TWU is a public institution¹⁴⁷, TWU is and always has been a private university.

129. TWU was originally incorporated in 1969 by an act of the B.C. legislature. The legislation was subsequently amended in 1972, 1977, 1979, 1985, 2004 and 2007. In all cases, the purpose of TWU has remained the same: “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.”¹⁴⁸

130. The B.C. government, through successive generations and changing leadership, has accepted that post-secondary education with a Christian philosophy and viewpoint is consistent with the public interest. There has been no suggestion that TWU’s status or mandate, or its requirement that students and faculty agree, accept and acknowledge the Community Covenant, is arbitrary, discriminatory or otherwise unlawful in any way.

¹⁴⁷ Convocation Transcript (Ms. Backhouse), April 24, 2014, Record of Proceedings, Tab 295, page 3074, lines 16-22.

¹⁴⁸ *Trinity Western University Act*, *supra* note 1, s 3(2).

(ii) TWU is not subject to the *Charter*

131. The Supreme Court of Canada stated in 2001: “It is important to note that [TWU] is a private institution that is exempted, in part, from the British Columbia human rights legislation and to which the *Charter* does not apply.”¹⁴⁹

132. TWU does not rely on any government monies to fund its educational programs. TWU is legally autonomous, has its own governing body, manages its own affairs, allocates its funds and pursues its own goals within the legislated limitations of the *Act*.¹⁵⁰ TWU’s action or policies are not part of the “government apparatus” even though it is a creature of statute and has been given the legal status of a natural person.¹⁵¹

133. Put another way, TWU is not constitutionally obligated to provide the right to equal protection without discrimination to LGBT individuals under section 15(1) of the *Charter*.

(iii) TWU is exempt from the B.C. *Human Rights Code*

134. As a service-provider and employer, TWU is *prima facie* subject to the B.C. *Human Rights Code*. But section 41(1) of the *Code* states:

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.¹⁵²

135. The Supreme Court of Canada and the B.C. Court of Appeal have held that section 41

¹⁴⁹ *TWU 2001*, *supra* note 73 at ¶25, BOA, Tab 3.

¹⁵⁰ *Trinity Western University Act*, *supra* note 1; *McKinney v University of Guelph*, [1990] 3 SCR 229 at 265-269, BOA, Tab 23.

¹⁵¹ *McKinney*, *ibid* at 275, BOA, Tab 23; *United Church of Canada v Anderson* (1991), 2 OR (3d) 304, 1991 CarswellOnt 530 at ¶41 (Gen Div), BOA, Tab 24.

¹⁵² *Human Rights Code*, *supra* note 74, s 41(1).

actively permits “the promotion of religion” and protects the right to associate.¹⁵³ The exclusion serves an “important equality seeking purpose” as it recognizes that it is “it is sometimes necessary to treat different people differently, in ways that recognize their actual needs.”¹⁵⁴

136. This fact is important. It reflects a conscious choice by the legislator. As explained by the Supreme Court of Canada in 2001:

Therefore, although the BCCT was right to evaluate the impact of TWU’s admission policy on the public school environment, it should have considered more. *The Human Rights Code, R.S.B.C. 1996, c. 210, specifically provides for exceptions in the case of religious institutions, and the legislature gave recognition to TWU as an institution affiliated to a particular Church whose views were well known to it.* While the BCCT says that it is not denying the right to TWU students and faculty to hold particular religious views, it has inferred without any concrete evidence that such views will limit consideration of social issues by TWU graduates and have a detrimental effect on the learning environment in public schools.¹⁵⁵

137. As an ancillary point, the suggestion that the LSUC would violate the Ontario *Human Rights Code* if it accredited TWU is without merit. Ontario’s *Code* also accommodates religious organizations and institutions.¹⁵⁶

138. If the Community Covenant does not violate either the B.C. *Human Rights Code* or Ontario *Human Rights Code*, it is not clear what objective the LSUC is trying to achieve and why an absolute prohibition on prospective TWU students is necessary, or to use the language of *Oakes*, rationally connected to any objective or the minimal impairment necessary to achieve that objective.

¹⁵³ *Caldwell v Stuart*, [1984] 2 SCR 603 at 626, BOA, Tab 25; *Vancouver Rape Relief Society v Nixon*, 2005 BCCA 601 at ¶51, BOA, Tab 26.

¹⁵⁴ *Gillis v United Native Nations Society*, 2005 BCHRT 301 at ¶21, BOA, Tab 27.

¹⁵⁵ *TWU 2001*, *supra* note 73 at ¶32 [emphasis added], BOA, Tab 3.

¹⁵⁶ Section 18 of the Ontario *Human Rights Code* states: “The rights under Part I to equal treatment with respect to services and facilities, with or without accommodation, are not infringed where membership or participation in a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by a prohibited ground of discrimination is restricted to persons who are similarly identified.”

(iv) **The LSUC’s decision is a disproportionate infringement of the applicants’ rights**

139. In equality rights and religious freedom cases, the “duty to accommodate” is the “corollary” of the minimal impairment test. Anyone seeking to disregard the duty to accommodate must show that it is necessary, in order to achieve a legitimate and important legislative objective, to apply the standard in its entirety.¹⁵⁷ In *TWU 2001*, the Supreme Court of Canada made clear that the regulator must consider the actual impact of religious beliefs, not the religious beliefs themselves.¹⁵⁸

140. In this case, the LSUC has opted for an “absolute prohibition” seemingly based on the concern that the Community Covenant discriminates against LGBT individuals. But if the Community Covenant is not discriminatory, in that it does not infringe either the *Charter* or B.C.’s *Human Rights Code*, it is not clear what purpose the LSUC is trying to achieve (other than a general statement of principal in support of LGBT rights), never mind why an absolute prohibition is necessary.

141. Although the Supreme Court of Canada makes clear that there is no “hierarchy of rights”, and many of the benchers that voted to refuse accreditation expressly acknowledged this proposition, many of the same benchers gave absolute protection to perceived LGBT equality rights and afforded no protection to religious freedom or religious equality, even though no LGBT equality rights have been infringed.¹⁵⁹

142. The implication of the decision is that the majority of the benchers are concerned that TWU

¹⁵⁷ *Multani v Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6 at ¶53, BOA, Tab 28.

¹⁵⁸ *TWU 2001*, *supra* note 73 at ¶43, BOA, Tab 3.

¹⁵⁹ *Ibid* at ¶31, BOA, Tab 3; see for example Convocation Transcript (Mr. Wardle), April 24, 2014, Record of Proceedings, Tab 295, pages 3111-3112, lines 12-25, 1-3; Convocation Transcript (Mr. Wright), April 24, 2014, Record of Proceedings, Tab 295, pages 3150-3154; Convocation Transcript (Mr. Braithwaite), April 24, 2014, Record of Proceedings, Tab 295, page 3163, lines 7-20; Convocation Transcript (Mr. Campion), April 10, 2014, Record of Proceedings, Tab 293, page 2979, lines 15-20.

graduates will discriminate against LGBT individuals when they become lawyers. The Supreme Court of Canada admonished the regulator in *TWU 2001* for doing the same thing.

143. Here, the LSUC had no evidence of any negative impact from TWU's Community Covenant. The FLSC has confirmed that TWU's proposed curriculum meets the National Requirement (the "standards of learning"). There is no evidence that TWU's Christian philosophy leads to a gap in TWU law students' knowledge and understanding of the *Charter*, equality rights or family law.

144. There is no evidence that TWU graduates would be less competent or less professionally responsible than graduates of other law schools. Arguably, the values espoused in the Community Covenant should make TWU students more ethical.

145. Just as the BCCT was criticized in *TWU 2001* for relying on general perceptions of discriminatory behaviour, rather than actual risk to schools, there is no evidence that the religious beliefs of TWU graduates will lead them to discriminate against their employees or their clients. The uncontradicted and unchallenged evidence of Richard Green and Kelly Hart is that TWU graduates can reconcile their religious beliefs with their duties to their clients and to the administration of justice.¹⁶⁰

146. Moreover, even if a graduate of TWU's proposed law school did act in a discriminatory manner, the LSUC has far less draconian remedies available to it. The *Rules of Professional Conduct* require a lawyer to discharge his or her responsibilities to clients and the public honourably and with integrity, which includes the "special responsibility" to respect Ontario's

¹⁶⁰ Green Affidavit, Application Record, Tab 12, page 587; Hart Affidavit, Application Record, Tab 13, page 597.

human rights laws.¹⁶¹ As noted in *TWU 2001*, professional disciplinary proceedings for individuals who *act* on their beliefs is the far better method of dealing with discriminatory *conduct*, rather than making sweeping and discriminatory assumptions of an entire student body.¹⁶²

(v) TWU does not deny admission to LGBT individuals.

147. TWU does not bar admission to LGBT students. Although some LGBT students may not be willing to abide by the Community Covenant and, as such, may not apply to TWU, it is a gross overgeneralization to assume there are not and will not be LGBT students at TWU. Both Arend Strikwerda and Iain Cook, who are not heterosexual, attended and graduated from TWU, and accepted and acknowledged the Community Covenant, including its prohibition on sexual intimacy outside of heterosexual marriage.

(vi) The LSUC's decision has limited or no salutary effects.

148. The LSUC's decision appears to be a statement of principal in support of LGBT rights. But, as stated by the Nova Scotia Supreme Court:

The action by the NSBS does nothing to prevent a single person in Nova Scotia from being the subject of any discriminatory action in relation to the legal profession. No lawyer will be less likely to discriminate and no person will be less likely to be discriminated against because of it. There is no evidence to support the contention that reasonably informed LGBT people will be more or less likely to find the profession a welcoming one as a result of this particular action. It will not prevent the NSBS from being perceived as hypocritical. It will do nothing whatsoever to improve the status of LGBT people in this province.¹⁶³

149. So too here. There is simply no evidence that the LSUC's decision will have any benefit to the LGBT community. In fact, based on the examples of Richard Green and Kelly Hart, the

¹⁶¹ Ontario, LSUC, *Rules of Professional Conduct*, r 2.1-1, 6.3.1-1

¹⁶² *TWU 2001*, *supra* note 73 at ¶37, BOA, Tab 3.

¹⁶³ *TWU v NSBS*, *supra* note 54 at ¶269, BOA, Tab 2.

LSUC's decision will have decreased access to justice for LGBT individuals.

150. In contrast, the deleterious effects are pronounced:

- (a) the religious beliefs of an entire community will be undermined, sending the message that some equality rights are more important than others;
- (b) prospective TWU law students will be forced to choose between their faith and their career ambitions; and
- (c) TWU law graduates will be deprived of their livelihood if they seek not to practice in Ontario, decreasing access to justice and diminishing the diversity of the Bar.

(e) Conclusion

151. The decision infringes the applicants' *Charter* rights. It does so in the name of protecting the rights of LGBT students, which the majority of benchers equate with the public interest.

152. In reaching this conclusion, the LSUC goes unreasonably too far. It prefers certain *Charter* values over the freedom of religion, association and expression and the equality rights of evangelical Christians. It ignores the context for the Community Covenant, which violates neither the *Charter* nor the *B.C. Human Rights Code* and, in fact, prohibits discrimination or harassment of LGBT students.

153. Work is one of the most "fundamental aspects" in a person's life. A person's employment is an essential component of his or her sense of "identity, self-worth and emotional well-being".¹⁶⁴ It is unreasonable for the LSUC to effectively cut off TWU graduates from practicing their chosen

¹⁶⁴ *Alberta Reference*, *supra* note 140 at 368, BOA, Tab 20.

profession in Ontario simply because some of the LSUC's benchers disagree with the Community Covenant.

4. The LSUC's Decision is Biased

154. The LSUC, as an adjudicative administrative body, owes a duty of fairness to TWU in respect of the determination of whether TWU's law school should be accredited. The demonstration of a reasonable apprehension of bias by the LSUC would cause a violation of the duty of fairness owed to TWU.¹⁶⁵

155. The test for bias is: "what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."¹⁶⁶

156. Mr. Ruby was allowed by the LSUC to make inflammatory and derogatory comments against TWU, although it was acknowledged that he intended to act as counsel challenging the accreditation of TWU in British Columbia.¹⁶⁷ He also participated in a media campaign to discredit TWU.¹⁶⁸ Others who felt strongly, or were aligned with one side of the issue, could submit only written comments. Mr. Ruby, however, could speak to the benchers, without the right of TWU to directly reply.

157. A reasonable person, considering all of the circumstances of the case, would conclude that the LSUC showed a reasonable apprehension of bias in allowing Mr. Ruby to participate as he did and to make submissions.

¹⁶⁵ *Newfoundland Telephone Co v Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 SCR 623 at 636, BOA, Tab 29.

¹⁶⁶ *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at 849-50 [*Baker*], BOA, Tab 30.

¹⁶⁷ Convocation Transcript, April 24, 2014, Record of Proceedings, pages 2912-2913, lines 4-25, 1-19.

¹⁶⁸ Epp-Buckingham Affidavit, ¶8, Application Record, Tab 7, page 517.

158. Even where the delegate does not directly display bias, the environment of the delegate must be considered in determining whether there has been bias or not.¹⁶⁹ Although Mr. Ruby could not vote in Convocation, by allowing him to make oral submissions at Convocation, the LSUC implicitly authorized his comments, although they knew in advance the subject matter, as evidenced by the discussion about whether he should be permitted to speak.¹⁷⁰

5. This Court Should Order that TWU’s Law School be Approved

159. If the appeal is allowed, this court can remit the matter to the benchers for reconsideration consistent with this Court’s decision, or the Court can determine the issue, and order that TWU’s law school be accredited.¹⁷¹

160. The Court may determine the issue where remitting the case would be “pointless”, where the tribunal is no longer “fit to act”, and in cases where, “in light of the circumstances and the evidence in the record, only one interpretation or solution is possible, that is, where any other interpretation or solution would be unreasonable”.¹⁷²

161. All of these circumstances are made out here. If TWU prevails on appeal, then its law school must be accredited. It is not possible to remit the matter back to a differently constituted panel. And it would be pointless to remit the matter to the same benchers who chose to ignore binding precedent. If TWU’s appeal is allowed, the Court should order that TWU’s law school be accredited.

¹⁶⁹ *Baker*, *supra* note 166 at 849-50, BOA, Tab 30.

¹⁷⁰ Convocation Transcript, April 24, 2014, Record of Proceedings, pages 2912-2913, lines 4-25, 1-19.

¹⁷¹ *Trinity Western University v British Columbia College of Teachers*, 1997 CanLII 2124 (BC SC), BOA, Tab 31, *aff’d TWU 2001*, *supra* note 73, BOA, Tab 3.

¹⁷² *2274659 Ontario Inc. v Canada Chrome Corporation*, 2014 ONSC 4446 (Div Ct) at ¶99, BOA, Tab 32; *Stetler v The Ontario Flue-Cured Tobacco Growers’ Marketing Board*, 2009 ONCA 234 at ¶41-42, BOA, Tab 33.


PART IV: ORDER REQUESTED

162. For the reasons set out above, the applicants seek an order:

- (a) declaring that the LSUC's decision was unauthorized and otherwise invalid;
- (b) approving TWU's application for accreditation of its proposed law school or, in the alternative, an order setting aside the LSUC's decision and remitting this matter back to the LSUC to be re-heard by Convocation in accordance with this Court's reasons; and
- (c) granting the applicants their costs of this application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

March 2, 2015

A handwritten signature in black ink, appearing to read "Bennett Jones LLP per [initials]", is written over a horizontal line.

Bennett Jones LLP

SCHEDULE “A”**LIST OF AUTHORITIES**

1. *Alghaithy v Ottawa University*, 2011 ONSC 5879
2. *Trinity Western University v Nova Scotia Barristers’ Society*, 2015 NSSC 25
3. *Trinity Western University v British Columbia College of Teachers*, 2001 SCC 31
4. *Doré v Barreau du Québec*, 2012 SCC 12
5. *Dunsmuir v New Brunswick*, 2008 SCC 9
6. *Mills v Ontario (Workplace Safety and Insurance Appeals Tribunal)*, 2008 ONCA 436
7. *Stewart v Canadian Broadcasting Corp*, 1997 CanLii 12318 (Ont Ct (Gen Div))
8. *Ontario (Public Safety and Security) v Criminal Lawyers’ Association*, 2010 SCC 23
9. *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37
10. *R v Sharpe*, 2001 SCC 2
11. *Insurance Corporation of British Columbia v Unifund Assurance Company*, 2003 SCC 40
12. *Reference re Securities Act*, 2011 SCC 66
13. *Woods v The King*, [1951] SCR 504
14. *Bedford v Canada (Attorney General)*, 2013 SCC 72
15. *Syndicat Northcrest v Amselem*, 2004 SCC 47
16. *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37
17. *Quebec (Attorney General) v A*, 2013 SCC 5
18. *Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 SCR 927
19. *Whatcott v Saskatchewan Human Rights Tribunal*, 2013 SCC 11
20. *Reference re Public Service Employee Relations Act (Alberta)*, [1987] 1 SCR 313
21. *Mounted Police Association of Ontario v Canada (Attorney General)*, 2010 ONCA 635

22. *Ontario v Fraser*, 2011 SCC 20
23. *McKinney v University of Guelph*, [1990] 3 SCR 229
24. *United Church of Canada v Anderson* (1991), 2 OR (3d) 30 (Gen Div)
25. *Caldwell v Stuart*, [1984] 2 SCR 603
26. *Vancouver Rape Relief Society v Nixon*, 2005 BCCA 601
27. *Gillis v United Native Nations Society*, 2005 BCHRT 301
28. *Multani v Commission scolaire Marguerite-Bourgeois*, 2006 SCC 6
29. *Newfoundland Telephone Co v Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 SCR 623
30. *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817
31. *Trinity Western University v British Columbia College of Teachers*, 1997 CanLII 2124 (BC SC)
32. 2274659 *Ontario Inc v Canada Chrome Corporation*, 2014 ONSC 4446 (Div Ct)
33. *Stetler v The Ontario Flue-Cured Tobacco Growers' Marketing Board*, 2009 ONCA 234

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Constitution Act, 1867 (UK), 30 & 31 Vict c 3.

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

1. Repealed.
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes:
 - (a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:
 - (b) Lines of Steam Ships between the Province and any British or Foreign Country:
 - (c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.
11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.

13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
16. Generally all Matters of a merely local or private Nature in the Province.

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c II

2. Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

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

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Law Society Act, RSO 1990, c L8

1.(1) “Convocation” means a regular or special meeting of the benchers convened for the purpose of transacting business of the Society; (“Conseil”)

“licensee” means,

- (a) a person licensed to practise law in Ontario as a barrister and solicitor, or

(b) a person licensed to provide legal services in Ontario; (“titulaire de permis”)

4.1 It is a function of the Society to ensure that,

(a) all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and

(b) the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario. 2006, c. 21, Sched. C, s. 7.

4.2 In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:

1. The Society has a duty to maintain and advance the cause of justice and the rule of law.
2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
3. The Society has a duty to protect the public interest.
4. The Society has a duty to act in a timely, open and efficient manner.
5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized. 2006, c. 21, Sched. C, s. 7.

27(3) If a person who applies to the Society for a class of licence in accordance with the by-laws meets the qualifications and other requirements set out in this Act and the by-laws for the issuance of that class of licence, the Society shall issue a licence of that class to the applicant. 2006, c. 21, Sched. C, s. 23 (1).

41. A licensee fails to meet standards of professional competence for the purposes of this Act if,

(a) there are deficiencies in,

(i) the licensee’s knowledge, skill or judgment,

(ii) the licensee’s attention to the interests of clients,

(iii) the records, systems or procedures of the licensee’s professional business, or

(iv) other aspects of the licensee’s professional business; and

(b) the deficiencies give rise to a reasonable apprehension that the quality of service to clients may be adversely affected. 2006, c. 21, Sched. C, s. 37.

Law Society of Upper Canada, By-Law 4 - Licensing

7. “accredited law school” means a law school in Canada that is accredited by the Society;

Law Society of Upper Canada, Rules of Professional Conduct

3.1. “competent lawyer” means a lawyer who has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of a client including

- (a) knowing general legal principles and procedures and the substantive law and procedure for the areas of law in which the lawyer practises,
- (b) investigating facts, identifying issues, ascertaining client objectives, considering possible options, and developing and advising the client on appropriate courses of action,
- (c) implementing, as each matter requires, the chosen course of action through the application of appropriate skills, including;
 - (i) legal research,
 - (ii) analysis,
 - (iii) application of the law to the relevant facts,
 - (iv) writing and drafting,
 - (v) negotiation,
 - (vi) alternative dispute resolution,
 - (vii) advocacy, and
 - (viii) problem-solving,
- (d) communicating at all relevant stages of a matter in a timely and effective manner;
- (e) performing all functions conscientiously, diligently, and in a timely and cost-effective manner;
- (f) applying intellectual capacity, judgment, and deliberation to all functions;
- (g) complying in letter and in spirit with all requirements pursuant to the Law Society Act;
- (h) recognizing limitations in one’s ability to handle a matter or some aspect of it, and taking steps accordingly to ensure the client is appropriately served;
- (i) managing one’s practice effectively;

- (j) pursuing appropriate professional development to maintain and enhance legal knowledge and skills; and
- (k) otherwise adapting to changing professional requirements, standards, techniques, and practices.

2.1-1. A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

[4.1] A lawyer has special responsibilities by virtue of the privileges afforded the legal profession and the important role it plays in a free and democratic society and in the administration of justice, including a special responsibility to recognize the diversity of the Ontario community, to protect the dignity of individuals, and to respect human rights laws in force in Ontario.

6.3.1-1. A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status, or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person.

Human Rights Code, RSO 1990, c H19

18. The rights under Part I to equal treatment with respect to services and facilities, with or without accommodation, are not infringed where membership or participation in a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by a prohibited ground of discrimination is restricted to persons who are similarly identified. R.S.O. 1990, c. H.19, s. 18; 2006, c. 19, Sched. B, s. 10.

Trinity Western University Act, SBC 1969, c44, as amended

3(2). The objects of the University 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.

Human Rights Code, RSBC 1996, c 210

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.

TRINITY WESTERN UNIVERSITY
Applicant

-and-

LAW SOCIETY OF UPPER CANADA and others
Respondents
Court File No. 250/14

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

PROCEEDING COMMENCED AT
TORONTO

**FACTUM OF THE APPLICANTS
TRINITY WESTERN UNIVERSITY and BRAYDEN
VOLKENANT**

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto ON M5X 1A4

Robert W. Staley (#27115J)
Email: staleyr@bennettjones.com

Derek J. Bell (#43420J)
Email: belld@bennettjones.com

Ranjan K. Agarwal (#49488H)
Email: agarwalr@bennettjones.com

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

Lawyers for the applicants