

Vancouver

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REGISTRY

No. S-149837
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TRINITY WESTERN UNIVERSITY and
BRAYDEN VOLKENAUT

PETITIONERS

AND:

THE LAW SOCIETY OF BRITISH COLUMBIA

RESPONDENT

**AFFIDAVIT OF JOHN CARPAY,
JUSTICE CENTRE FOR CONSTITUTIONAL FREEDOMS**

I, John Carpay, barrister and solicitor, of the City of Calgary, in the Province of Alberta,
MAKE OATH AND SAY:

1. I am the President of the Justice Centre for Constitutional Freedoms ("JCCF") and, as such, I have personal knowledge of the evidence sworn in this affidavit, except where otherwise stated to be based on information and belief.
2. I state, in this affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source. I am authorized to swear this affidavit on behalf of the JCCF.
3. I received a B.A. in political science from Laval University, and a law degree from the University of Calgary. I have been a member of the Law Society of Alberta since 1999.
4. For most of my legal career, my practice has been in constitutional litigation on behalf of both *Charter* litigants and interveners. From 2001 to 2005 I was in-house counsel with the Canadian Taxpayers Federation, and managed its intervention in *Benoit v. Canada*, 2003 FCA

236, at the trial and appellate levels, with the intervener Federation arguing that race, ancestry, descent, and ethnicity should not play any role in the taxation of Canadians. From 2005 to 2010, I served as the Executive Director of the Canadian Constitution Foundation, managing the Foundation's court interventions in *Kingstreet Investments v. New Brunswick*, 2007 SCC 1, *Whatcott v. Saskatchewan Human Rights Commission*, 2010 SKCA 26, and other cases. In *R. v. Kapp*, 2008 SCC 41, I acted for the Japanese Canadian Fishermen's Association when it intervened at the Supreme Court of Canada to argue for racial equality within the commercial fishery. Since 2010, I have served as the President of the JCCF, responsible for all of its constitutional litigation files.

JCCF and Its Expertise

5. The JCCF's mission is to promote and defend the constitutional freedoms of Canadians through litigation and education. The JCCF was established as a non-profit corporation by way of Letters Patent issued in October 2010 under the *Canada Corporations Act*. The JCCF's Board of Directors and Advisory Council include lawyers, law professors, academics and others active in the realm of Canadian law and public policy. Our Board of Directors and Advisory Council serve to significantly enhance the JCCF's experience and expertise in Canadian constitutional matters. Further, the JCCF maintains collaborative relationships with a good number of other constitutional and legal practitioners in several provinces. The JCCF has two full-time and three part-time staff.

6. The JCCF is a registered charitable organization, based in Calgary. The JCCF is independent, non-partisan, and non-religious. As a citizen-based organization, the JCCF relies on voluntary donations from over 1,300 donors from across Canada, including individuals and charitable foundations. The JCCF does not seek or accept funding from government at any level.

7. The focus of the JCCF's advocacy is on sections 2 and 7 of the *Canadian Charter of Rights and Freedoms*. The JCCF's activities, both in education and litigation, foster its expertise and unique perspective on the application of the *Charter*.

8. In addition to its litigation, the JCCF also conducts research and publishes its findings. For example, the annual Campus Freedom Index evaluates Canadian universities and students unions on their policies and practices, particularly as they relate to freedom of expression. Other

resources include a report on human rights legislation in 14 Canadian jurisdictions, and a guide for university students on campus free expression rights. The JCCF's efforts to educate Canadians about the nature and importance of their *Charter* freedoms frequently lead to appearances in radio, television, and newspaper media, including the publication of many guest columns on current constitutional issues.

9. The JCCF acts for citizens whose *Charter* rights and freedoms have been infringed by government or by a governmental authority. For example, in *Allen v. Alberta*, 2014 ABQB 184 (now before the Alberta Court of Appeal), the JCCF is arguing that Alberta's prohibition on private medical insurance violates the *Charter* rights to life and security of the person. In *Wilson v. University of Calgary*, 2014 ABQB 190, the JCCF represented seven University of Calgary students who were found guilty of non-academic misconduct for having peacefully expressed their opinions on campus. In addition to being involved in constitutional cases in various provinces across Canada, the JCCF frequently responds to inquiries from people concerning their constitutional rights, often becoming involved in these matters and helping to resolve them without the need for litigation.

10. The JCCF was granted intervener status in *Trinity Western University v. Nova Scotia Barrister's Society*, 2015 NSSC 25, in which the JCCF presented written and oral argument on *Charter* section 2(d) freedom of association before the Nova Scotia Supreme Court in December of 2014. The Court's decision in favour of Trinity Western University ("TWU") has now been appealed, and the JCCF is seeking leave to intervene before the Nova Scotia Court of Appeal.

11. The JCCF was also granted intervener status in *Trinity Western University v. Law Society of Upper Canada*, 2014 ONSC 5541 (decision on proposed interveners), where it will also present arguments on *Charter* section 2(d) freedom of association. In each of these two cases, the Court recognized the JCCF's interest and expertise, and granted the JCCF's applications to intervene and present arguments on the applicability of the freedom of association. The Ontario Superior Court of Justice will hear oral argument in June 2015.

Submissions to be Made by the JCCF

12. This case raises very important public interest issues as to whether *Charter* s. 2(d) freedom of association is unjustifiably violated when government imposes a sanction or penalty

on individuals who choose to join and belong to a voluntary association while pursuing professional accreditation.

13. Freedom of association protects the collective exercise of constitutionally protected freedoms.

14. The decision of the Law Society of British Columbia has, either in purpose or effect, interfered with the freedom of association of TWU students to live together in a community while studying law. These same students, holding to the same beliefs and making the same lifestyle choices, are welcome to enter the legal profession in British Columbia if they do not associate together, and instead attend other law schools as individuals. The Law Society's decision therefore interferes with the Charter section 2(d) freedom of association.

15. The law students at TWU's law school are seeking to study law and enter the legal profession in association with others, choosing to live in a community governed by the Community Covenant. The Law Society's decision is a response to the choice of individual students to associate with TWU's Law School and live by the terms of the Community Covenant. The decision's effect is to penalize that choice.

16. The Law Society of British Columbia, a government body, violates the *Charter* s. 2(d) rights of TWU students by demanding, as a requirement of entering the legal profession in British Columbia, that students abandon their freedom to study law while belonging to a religious community that has a Community Covenant.

17. In addition to this violation of s. 2(d), the exclusion of the law graduates of TWU from being members of the Law Society of British Columbia also infringes the ability to exercise without penalty a student's fundamental freedom of religion, belief, thought and conscience under s. 2(a) of the *Charter*.

The JCCF's Interest in These Proceedings

18. The JCCF was founded with the mission of advancing and promoting the core principles of freedom and equality as protected by the *Canadian Charter of Rights and Freedoms*. The requirements and effect of these principles will be a significant focus of the present application for judicial review of this decision of the Law Society of British Columbia. This case will

involve consideration of the proper balance between the public interest in equality and the *Charter* section 2 fundamental freedoms.

19. The balancing of rights and freedoms under the *Charter* is not a concern limited to British Columbia, as such a balancing frequently impacts individuals and groups across Canada. In its activities in various provinces, the JCCF is actively involved in seeking to establish the appropriate balance which does not overemphasize or ignore any of the *Charter's* guarantees. Such work touches the core of the JCCF's mission and purpose.

The JCCF's Distinct Perspective

20. As a group dedicated to and experienced in addressing the *Charter* section 2 fundamental freedoms, the JCCF is in an advantageous and unique position to assist in illuminating the *Charter* issues of this case for the Court's consideration.

21. In granting the JCCF's motion to intervene in *Trinity Western University v. Law Society of Upper Canada*, 2014 ONSC 5541 at paras. 48-49, Justice Nordheimer recognized the JCCF's unique perspective:

Unlike the organizations that I have just dealt with, JCCF is a non-religious organization. As such, it brings a different perspective to the issues. It concentrates its submissions on the freedom of association issue as it may relate to any group that holds and espouses views that may be unpopular or controversial in my view, its view point is sufficiently distinct that it may be valuable to the court hearing this matter.

22. The facts of this important case raise conspicuously the question of the nature and scope of the *Charter's* guarantee to freedom of association. Freedom of association generally receives less attention than the *Charter* section 2 freedoms of expression, conscience, and religion. Its importance may be overlooked by the parties to this case in favour of more conventional arguments. The JCCF's application to intervene in this case, solely to address the application of freedom of association, will significantly advance the goal of giving this Court the fullest perspective from which to rule on the merits of the present petition.

23. Having been involved in interventions in other cases, I am aware of the need to avoid undue delay of the proceedings or prejudice to any of the parties to this case. It is that awareness

