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SUPREME COURT SCHEDULING

No. S-149837
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IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TRINITY WESTERN UNIVERSITY and
BRAYDEN VOLKENAUT

PETITIONERS

AND:

THE LAW SOCIETY OF BRITISH COLUMBIA

RESPONDENT

BRIEF OF THE JUSTICE CENTRE FOR CONSTITUTIONAL FREEDOMS

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Table of Contents

OVERVIEW

1. The Justice Centre for Constitutional Freedoms agrees with and adopts the Background[1] contained in the Written Argument of Trinity Western University and Brayden Volkenant ("TWU").

2. The Supreme Court of Canada has already ruled, not merely on the legal question at hand generally, but on the legal question's specific application to TWU. In *Trinity Western University v. British Columbia College of Teachers* ("*TWU v. BCCT*"),[2] the Supreme Court of Canada held that "TWU is not for everybody"[3] and recognized TWU's right to have an accredited education program in the province of British Columbia. The LSBC is nevertheless retracing the path of the BC College of Teachers ("BCCT"), insisting that "the very purpose of TWU as an institution is incompatible with an open, accepting and inclusive educational environment in which all can feel comfortable."[4]

3. TWU has not fundamentally changed since the 2001 decision in *TWU v. BCCT*. Founded by the Evangelical Free Church, the stated purpose of TWU is still "to develop godly Christian leaders".[5] TWU's code of conduct, the Community Covenant, is still designed to promote this Christian development in students' lives, and is still based on the Evangelical Free Church's understanding of Scripture. TWU still welcomes all students, regardless of sexual orientation, belief or non-belief, who choose to join TWU's community and abide by the Community Covenant.

4. No one is compelled to attend TWU. Indeed, the tuition at TWU is among the highest of any university in Canada.[6] Students can attend many universities other than TWU and receive the professional degree they are seeking – and at less cost. But all universities have some "code of conduct" and require students to adhere to their policies as a condition of attending.

5. Yet, because (according to the LSBC) the "overwhelming majority" of B.C. lawyers voted to disapprove of TWU's beliefs and practices,[7] the LSBC feels entitled to "condemn" TWU and "attempt to convince TWU to change its policy" by barring TWU law graduates from practicing in B.C.[8]

6. The Supreme Court of Canada has already upheld the right of TWU and its students to associate and educate on the basis of its convictions, finding that TWU "is designed to address the needs of people who share a number of religious convictions".[9] Fourteen years later, the LSBC

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[1] Written Argument of Trinity Western University and Brayden Volkenant [TWU Brief], at paras. 9-100.
[2] 2001 SCC 31 [TWU *v. BCCT*].
[3] *TWU v. BCCT*, at para. 26.
[4] Amended Response to Petition, filed April 27, 2015 [LSBC Response], paras. 212-17.
[5] http://twu.ca/about/. This B.C. legislature has recognized TWU's obligation to provide a university education "with an underlying philosophy and viewpoint that is Christian." *Trinity Junior College Act*, SBC 1969, c 44, s. 3(2)
[6] *TWU*'s tuition is among the highest in Canada. http://www.univcan.ca/canadian-universities/facts-and-stats/tuition-fees-by-university/.
[7] LSBC Response, paras. 84, 92, 146.
[8] LSBC Response, para. 253.
[9] *TWU v. BCCT* at para. 26.

now insists that TWU change the same "offending" convictions in order to enable some individuals to feel more "comfortable" at TWU. The LSBC also asserts that the commitments in the Community Covenant "impose discriminatory impacts" on: LGB persons, because of TWU's commitment to marriage between a man and a woman; common law couples, because of TWU's commitment to abstinence outside of marriage; women, because of TWU's commitment to the sanctity of life from conception onwards; and non-believers and members of other faiths, because of TWU's commitment to the Bible and a Christian way of living.[10]

7. Incongruently, the LSBC has no objection to individual Evangelical Christians seeking to join the legal profession in B.C.[11] The LSBC even goes so far as to recognize that "without question or exception," Evangelical Christians make a valuable contribution to the legal profession. Moreover, the LSBC makes no inquiry and no efforts to regulate the beliefs of its members generally. Neither does it subject those Evangelical Christians who attended public law schools to heightened scrutiny or adverse treatment for the purposes of admission to the LSBC.[12]

8. It is apparent that the LSBC has placed itself on unsustainable footing by its conflicting positions. The LSBC's intolerance, on one hand, of a private Evangelical Christian law school comprised of individuals who, on the other hand, it agrees are "without exception" valuable to the legal profession, is irrational and unreasonable, and constitutes an unconstitutional infringement to the right to freely associate under the *Charter.*

ISSUES

9. This brief addresses the LSBC's intolerance of TWU's association as follows:
   A. The appropriate standard of review is correctness.
   B. The LSBC's decision deprives TWU and its students of their fundamental freedom of association.
      i. The test for infringement of freedom of association under s. 2(d).
      ii. The LSBC's decision infringes the s. 2(d) rights of TWU and its students.
   C. The LSBC exceeds its mandate.
      i. The LSBC's "pressing and substantial objective" is not within its statutory objectives.
      ii. The LSBC decision to not accept graduates from TWU is not rationally connected to its legitimate objectives.

ARGUMENT

A. <u>The appropriate standard of review is correctness</u>

10. In *TWU v. BCCT*, the Supreme Court of Canada reviewed the decision not to accredit TWU's teaching program for correctness, setting a precedent for the proper standard of review in this substantially identical case.[13]

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[10] LSBC Response, paras. 47-55 and 201-17.
[11] LSBC Response, paras. 12, 311.
[12] LSBC Response, para. 311.
[13] *See New Brunswick (Board of Management) v. Dunsmuir*, 2008 SCC 9 at para 57.

11. Further, the Court recently emphasized the need for a correctness review of constitutional questions that are of importance to the legal system and fall outside the administrative tribunal's area of expertise. In *Mouvement laïque québécois v. Saguenay (City)*, the Court applied the correctness standard to the issue of "the scope of the state's duty of neutrality that flows from freedom of conscience and religion".[14] The Court found this question to be of importance to the legal system, broad and general in scope, and one that needed to be decided in a uniform and consistent manner.[15]

12. Likewise, the freedom of private associations to determine their own beliefs and practices without government interference is a general question of law that is of importance to the legal system. The conflict between TWU and the LSBC has been public and controversial in nature. The provincial law societies have split on this issue. The Ontario and Nova Scotia court decisions that have addressed the dispute directly conflict.[16] In B.C., public meetings and a referendum were held. Several law societies have openly ignored binding precedent from the Supreme Court of Canada in *TWU v. BCCT*. The issue is not confined to the legal profession – it potentially impacts every private association in Canadian society. The need for uniform and consistent adjudication is apparent.

13. The JCCF submits that the LSBC's decision cannot be accorded deference under a reasonableness review. First, the LSBC was not acting as a legal disciplinary body adjudicating misconduct of an *individual*,[17] but was passing judgment on the beliefs and lifestyle embraced by a voluntary community.[18] Unlike disciplinary decisions,[19] the *Legal Profession Act* ("*LPA*") imposes no limitations on appeals from admission decisions. Second, the LSBC was not exercising any expertise under the *LPA* when it ignored the legal advice it had obtained and reversed its prior decision to accept TWU law graduates. Since the LSBC was clearly not acting within its "specialized expertise," the presumption of deference is rebutted.[20]

B. The LSBC's decision deprives TWU and its students of their fundamental freedom of association

14. Under the *Canadian Charter of Rights and Freedoms* ("*Charter*"), Canada expressly recognizes the "fundamental" freedom of association[21] and guarantees its protection under s. 2(d). The Supreme Court of Canada has adopted "a generous approach" to freedom of association "centred on the purpose of encouraging the individual's self-fulfillment and the collective

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[14] *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16 [*Saguenay*] at paras 45-51.
[15] *Ibid.* at para. 51.
[16] *Trinity Western University v. Nova Scotia Barristers' Society*, 2015 NSSC 25 [*TWU v. NSBS*]; *Trinity Western University v. The Law Society of Upper Canada*, 2015 ONSC 4250.
[17] *Doré v. Barreau du Québec*, 2012 SCC 12 [*Doré*], at paras. 36, 44-45, 53.
[18] This brief will not duplicate TWU's arguments that the LSBC did not have jurisdiction to make the Decision and that that issue should be reviewed for correctness. See TWU Brief, paras. 151-153.
[19] *Legal Profession Act*, S.B.C. 1998, c.9 [*LPA*], s. 48(2).
[20] *Doré*, at para. 30.
[21] This express constitutional protection for the freedom of association in Canada stands in contrast to the United States, where freedom of association is only regarded as a derivative right. *See NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958).

realization of human goals, consistent with democratic values, as informed by 'the historical origins of the concepts enshrined' in s. 2(*d*). . . ."[22]

i. The test for infringement of freedom of association under s. 2(d)

15. In *Mounted Police Association*, the Court clarified the application of s. 2(d). Writing for six of the seven Justices, McLachlin C.J. and Lebel J. held that s. 2(d) should be interpreted in "a purposive and generous fashion" and that "s. 2 (*d*) confers *prima facie* protection on a broad range of associational activity, subject to limits justified pursuant to s. 1 of the *Charter*."[23]

16. The test for determining an infringement of s. 2(d) is whether the state conduct constitutes a substantial interference with freedom of association in either its purpose or its effects.[24] In order to determine whether there has been "substantial interference" it is necessary to first examine the purpose of s. 2(d) and the scope of protection afforded to different associations. As a private and voluntary religious, educational, and vocational association, the association of TWU is at the very core of what is protected by s. 2(d) of the *Charter*.

17. In *Mounted Police Association,* McLachlin C.J. and Lebel J. took guidance from the reasons of Chief Justice Dickson in the *Alberta Reference,*[25] affirming that the guarantee of freedom of association under s. 2(d) protects 1) the right to join with others and form associations, 2) the right to join with others in the pursuit of other constitutional rights, and 3) the right to join with others to meet on more equal terms the power and strength of other groups or entities.[26]

18. McLachlin C.J. and Lebel J. held that s. 2(d) must be interpreted in light of its context and historical origins.[27] In this regard, they noted that "[t]he historical emergence of association as a fundamental freedom ... has its roots in the protection of religious minority groups."[28] They further emphasized that "[a]ssociation has always been the means through which political, cultural and racial minorities, religious groups and workers have sought to attain their purposes and fulfil their aspirations."[29] In the *Alberta Reference*, Dickson C.J. noted the relevance of, *inter alia,* religious freedom and educational rights to the freedom of association, noting Canada's history of "giving special recognition to collectivities or communities of interest" in areas such as denominational schools, language rights, aboriginal rights and our multicultural heritage.[30]

19. Citing with approval from Dickson C.J.'s explanation of the purposive approach to s. 2(d), McLachlin C.J. and Lebel J. noted:

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[22] *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 at para 46 [*Mounted Police Association*].
[23] *Mounted Police Association,* at para. 60. Violent associations are an exception to s. 2(d) protection.
[24] *Mounted Police Association*, at paras. 111, 72, 121
[25] *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313 ["*Alberta Reference*"].
[26] *Mounted Police Association*, at paras. 52, 53, 62 and 66.
[27] *Mounted Police Association*, at para. 47 (quoting *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, at p 344).
[28] *Mounted Police Association,* at para. 56.
[29] *Mounted Police Association,* at paras. 35, 57 (quoting *Alberta Reference,* at p. 366).
[30] *Alberta Reference*, at pp. 364-65.

> Through association, individuals have been able to participate in determining and controlling the immediate circumstances of their lives, and the rules, mores and principles which govern the communities in which they live. . . .[31]

Thus, what the LSBC considers intolerable "discrimination" is regarded by the Supreme Court of Canada as an indispensable element of freedom of association.[32]

20. In the instant case, TWU is an educational association of a religious minority holding Evangelical Christian views. TWU challenges the LSBC's *de facto* ban on its law graduates accessing meaningful employment in the legal profession.[33] TWU's Community Covenant defines the voluntary associational exercise of TWU and its students and creates a set of "rules, mores, and principles which govern" their Evangelical Christian community.[34] TWU seeks to create a place to study law, education and other vocations in a Christian environment and from a Christian worldview, something individuals can only achieve collectively.[35]

ii. The LSBC's decision infringes the s. 2(d) rights of TWU and its students

21. The guarantee of freedom of association "functions to protect individuals against more powerful entities."[36] The need for oversight is apparent in the case at bar – the LSBC is a powerful entity exercising its authority improperly. It thwarted the "legitimate goals and desires"[37] of TWU (to have a law school) by capriciously reversing its approval on the basis of sentiment and perception rather than law. This is a "substantial interference" with the freedom of association.[38]

22. The Court in *R v. Big M Drug Mart Ltd.* held: "Freedom can primarily be characterized by the absence of coercion or constraint. ... Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others."[39]

23. By rescinding approval of TWU's law program the LSBC intentionally and expressly[40] pressures and coerces TWU to change the nature of its association in order to please people who

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[31] *Mounted Police Association*, at para. 35 (quoting *Alberta Reference,* at p. 365).
[32] *See also TWU v. BCCT,* at para. 34: "Freedom of religion, conscience and association coexist with the right to be free of discrimination based on sexual orientation. Even though the requirement that students and faculty adopt the Community Standards creates unfavourable differential treatment since it would probably prevent homosexual students and faculty from applying, one must consider the true nature of the undertaking and the context in which this occurs."
[34] *Mounted Police Association,* at para. 35.
[35] The entrenched and only worldview in which one can receive legal education in Canada is the strictly secular viewpoint taught at all Canadian law schools. This stands in contrast to the United States which has numerous private and religious law schools offering a variety offering instruction from a variety of worldviews.
[36] *Mounted Police Association,* at para. 58.
[37] *Ibid.*
[38] Freedom of association is a right of individuals and associations. *Mounted Police Association*, at para. 62.
[39] *R. v. Big M Drug Mart Ltd.*, at paras. 94-95. [Emphasis added]
[40] LSBC Response, para. 253.

disagree with TWU's beliefs.[41]

24. The LSBC argues that the *Charter* interests of TWU and its membership are only "minimally impacted" because, the LSBC asserts, Evangelical Christianity does not "require" the establishment of a separate law school or attendance at a law school with a Community Covenant.[42] But this assertion is wholly irrelevant to the application of *Charter* s. 2(d), and, as addressed by other intervenors, is also irrelevant to the application of s. 2(a).

25. The freedom of association is not derived from the freedom of conscience and religion or any other constitutional right. Rather, freedom of association is a right with its own *Charter*-protected content.[43] Thus, whether or not the LSBC's decision is a substantial interference with the collective exercise of freedom of religion (which we submit it is), it is a substantial interference with "associational activity for the purpose of securing the individual against state-enforced isolation and empowering individuals to achieve collectively what they could not achieve individually."[44]

26. The LSBC violates the "fundamental purpose of s. 2(*d*) to protect the individual from 'state-enforced isolation in the pursuit of his or her ends'"[45] by preventing the formation and attendance of an Evangelical Christian law school.[46] This is clearly within the "broad range of associational activity" that the Court has declared that s. 2(d) protects.[47] The LSBC denies TWU law graduates the "right of full participation in society"[48] solely because those graduates chose to join the association at TWU while studying law.

27. The LSBC does not and cannot screen out individual applicants for ideological suitability, or for individual lifestyle choices.[49] Evangelical Christians who live according to traditional biblical morality are perfectly eligible for membership to the LSBC, and are regularly admitted without scrutiny as to their personal beliefs (provided that they study law at a university other than TWU). However, when these very same individuals choose to join a private association in the form of a Christian law school, the LSBC denies them admission to the legal profession. This violates the most basic principle that s. 2(d) protects "the right to do collectively what one may do

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[41] LSBC's infringement of TWU's and its students' associational rights mirrors the conclusion of the Court in *TWU v. BCCT* at para. 33: "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." [Emphasis added]

[42] LSBC Response, para. 282-84.

[43] *Mounted Police Association,* at para. 48: "Freedom of association is not derivative of these other rights. It stands as an independent right with independent content, essential to the development and maintenance of the vibrant civil society upon which our democracy rests."

[44] *Mounted Police Association,* at para. 62.

[45] *Mounted Police Association,* at para. 58 (quoting Dickson C. J. in the *Alberta Reference,* at p. 365).

[46] The importance to Evangelical Christians of having a law school that incorporates a Christian worldview can be seen in the numerous evangelical Christian law schools in the United States, including Trinity Law School, Regent University School of Law, Liberty University School of Law, Pepperdine University, Notre Dame Law School and Oak Brook College of Law, to name just a few.

[47] *Mounted Police Association* at para. 60.

[48] *See TWU v. BCCT,* at para. 35.

[49] LSBC Response, paras. 12, 311.

as an individual."[50]

28. The LSBC's refusal of TWU law graduates has nothing to do with competence and professionalism[51] (in fact, TWU has received an A+ every year since 2005 for its academics.)[52] The LSBC refusal stems, partly or entirely, from the associational nature of TWU as an Evangelical Christian school in which students agree to abide by a common moral code of conduct.[53] One of the results of the refusal is that Evangelical Christians (and others) may only study law at secular institutions, isolated from the support and fellowship of the community at TWU. The LSBC thus ensures that only groups adhering to secular (or majoritarian) values are permitted to form associations that offer an accredited law program.

29. For its part, TWU requests administrative fairness: the approval of its law school on its academic and professional merits, nothing more or less. The LSBC concedes that TWU has met these requirements. But the LSBC has taken it upon itself (outside of its legislated mandate) to create a different standard to evaluate TWU. This is discriminatory.

30. In *TWU v. BCCT*, the Supreme Court of Canada found the failure of the BCCT to accredit TWU was a substantial interference with freedom of association.[54] There is no meaningful difference between what the BCCT sought to do, and what the LSBC now seeks to do.

31. The LSBC's decision may also have a chilling effect on religious minorities who espouse Biblical/traditional views on sex and marriage, and who wish to become (or already are) lawyers in B.C. The Supreme Court recognized this in *TWU v. BCCT*, where it held "if TWU's Community Standards could be sufficient in themselves to justify denying accreditation, it is difficult to see how the same logic would not result in the denial of accreditation to members of a particular church."[55] The LSBC's logic leads to a Canada where professional bodies attempt to scrutinize the religious and political beliefs of institutions and individuals (lawyers, teachers, dentists, accountants and physicians).

C. The LSBC exceeds its mandate

32. The LSBC exceeded the reach of its statutory objectives by ignoring the BC Minister of Advanced Education's approval of TWU's law school and by disregarding the *Charter* values at issue in deciding to refuse graduates from TWU. Consequently, its decision cannot be justified.[56]

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[50] *Mounted Police Association*, at para. 36. Section 2(d) also protects "some collective activities that have no true individual equivalents". *Ibid.*

[51] LSBC Response, para. 230.

[52] See, for example: *http://www.langleytoday.ca/education-twu-scores-a-for-quality-of-education-for-5th-year/*; *https://en.m.wikipedia.org/wiki/Trinity_Western_University*.

[53] Private religious law schools, with religious codes of conduct, have operated successfully in the United States for decades with no adverse effects on the legal profession or other minorities. See e.g. Pepperdine School of Law, http://law.pepperdine.edu/.

[54] *TWU v. BCCT*, at para. 32.

[55] *TWU v. BCCT*, at para. 33.

[56] The LSBC's decision cannot be justified under s. 1 of the *Charter*. The Supreme Court has integrated "the spirit of s. 1 into judicial review." *Doré*, at para. 57.

33. As noted above, a correctness standard of review applies to the issue of the freedom of private associations to establish their own beliefs and values without government interference. Consequently, it is not the role of this Court to determine whether the LSBC's decision *reasonably* reflects a proportionate balance between the *Charter* protections at stake and the relevant statutory mandate.[57] Rather, the Court's role is to ensure that the LSBC 1) did not exceed its statutory objectives, and 2) *correctly* determined how the *Charter* values at issue would best be protected in view of its statutory objectives.

34. We submit that the following elements of the *Oakes* test are useful in determining whether the LSBC correctly fulfilled this two-part duty.[58]

i. The LSBC's "pressing and substantial objective" is not within its statutory objectives

35. The LSBC justifies its decision as a measure to promote equal access to law schools, claiming that TWU discriminates against LGB people, women, "non-believers" and "members of other faiths".[59] The LSBC claims that upholding the public interest requires all law schools, including the private religious school at TWU, to make everyone "feel comfortable".[60] While the LSBC does have a statutory objective of establishing legal education programs and academic requirements, it does not have the statutory objective or jurisdiction to oversee or regulate TWU's institutional environment,[61] or ensure that every student feels "comfortable" at every law school.

36. In *TWU v. BCCT,* the BCCT also relied on the "public interest" argument in attempting to justify its improper refusal to accredit TWU's education program.[62] This argument failed. Similarly, the LSBC confuses the *Charter* s. 2 freedoms enjoyed by individuals and voluntary associations with the *Charter* s. 15 equality obligations that are imposed on government alone, and not on individuals and associations. [63] This logic has been discredited.[64]

37. It is worth noting that the LSBC's decision was purportedly made under Rule 2-27 of the LSBC's Rules, which lists the requirements for applicants to membership in the LSBC. But the LSBC oversteps. It is authorized to make rules governing articled students and applicants for membership in the law society[65] but is not authorized to make rules governing law schools. The LSBC has no mandate to force equality of access on private institutions. Its legitimate mandate is to accept articled students and applicants qualified to practice law in a competent and professional

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[57] *Doré*, at paras. 56-57; *Loyola*, at para. 37.
[58] A strict application of the *Oakes* test in administrative decisions was rejected by the Court in *Doré*. See *Doré* at para. 5. However, recent decisions continue to recognize value in considering the *Oakes* factors. *Loyola,* at paras. 88, 151 (McLachlin CJ and Moldaver J, concurring partially in result); see also *Saguenay*, at paras. 89-90. In *Loyola*, the Court noted that both *Oakes* and *Doré* "require that *Charter* protections are affected as little as reasonably possible in light of the state's particular objectives." *Loyola* at para 40.
[59] LSBC Response, paras. 50-55, 207-17.
[60] LSBC Response, para. 212.
[61] *LPA*, ss. 3(c), 20(1), 21(1). The
[62] *TWU v. BCCT*, at para 48.
[63] LSBC Response, paras 114-18, 183, 215,
[64] *TWU v. BCCT,* at para. 25.
[65] *LPA,* s. 11. These rules are binding on, *inter alia,* articled students and applicants, but not law schools.

(and non-discriminatory) manner.[66] There was no evidence in 2001 before the Supreme Court of Canada that graduates of TWU's education program performed in a discriminatory manner. There is no evidence to show that TWU law grads would act in a discriminatory fashion today. [67]

ii. The LSBC decision to not accept graduates from TWU is not rationally connected to its legitimate objectives

38. There is no rational connection between the LSBC's refusal to admit TWU law graduates and the LSBC's legitimate objective of admitting competent applicants. The LSBC has already admitted that individuals with Evangelical beliefs make "valuable contributions" to the profession.[68]

39. In *TWU v. BCCT*, the Court stated that "[f]reedom of religion, conscience and association coexist with the right to be free of discrimination based on sexual orientation."[69] The nature of TWU's association and its relation to the purpose of s. 2(d) must be considered when determining if the LSBC's violation of s. 2(d) is justified under s. 1 of the *Charter*.[70]

40. TWU does not impose its beliefs or Community Covenant on anyone. Rather TWU exists for those students who decide to continue their learning in a Christian academic environment. TWU's values do not result in offensive, anti-social or discriminatory conduct by its graduates.[71]

41. The Court must consider the "place of private institutions in our society".[72] Canadians have the choice of joining (or not) tens of thousands of charitable, ethnic, political, social, educational, cultural and recreational groups, all which enrich society in various ways. If government compelled each voluntary association to amend its identity for the sake of everyone's comfort, Canada as we know it would cease to exist. Our country would lose the rich diversity of expression that results from freedom of association – animated by individual choice and independence.[73] "[T]he diversity of Canadian society is partly reflected in the multiple religious organizations that mark the societal landscape and this diversity of views should be respected."[74]

42. There is no recognized right in Canada to join private associations. The LSBC essentially argues for a legal *right*, possessed by all persons, to attend TWU. The LSBC claims its objective of "protecting the rights of all persons" places it under the "statutory and constitutional obligation to deny its approval to the proposed law school."[75] Requiring TWU to accommodate behaviour

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[66] This examination of the proper jurisdiction of a professional body's jurisdiction can be seen in Supreme Court of Canada's decision in *TWU v. BCCT*, where it held that it was open to consider the impact TWU's practices would have on its graduates' professional performance. *TWU v. BCCT*, at paras. 11-14, 26.
[67] TWU Brief, paras. 78-79.
[68] LSBC Response, paras. 12, 311.
[69] *TWU v. BCCT*, at para. 34. With ss. 2(a), 2(b) and 15(1) being addressed by other intervenors, this discussion focuses on the proper protection for s. 2(d) freedom of association in this context.
[70] *Mounted Police Association*, at para. 61.
[71] TWU Brief, paras. 78-79 and fn. 118.
[72] *TWU v. BCCT*, at para. 34.
[73] *See Mounted Police Association*, at paras. 5, 81-91.
[74] *TWU v. BCCT*, at para. 33.
[75] LSBC Response, paras. 14, 183, 247-248.

contrary to the Community Covenant is no more justified than requiring Out for Kicks[76] (Vancouver's gay soccer league) to accommodate prayers prior to its activities.

43. The LSBC errs in its refusal to recognize TWU as a private voluntary institution to which the *Charter* and the *Human Rights Code* do not apply.[77] The LSBC imposes on TWU the obligations which are imposed only on government.[78] It confuses its own obligations under the *Charter* as a government body with the freedom enjoyed by all Canadians to create voluntary associations that not everyone will wish to join.[79]

44. It is a significant miscalculation for the LSBC to maintain that TWU's law school will result in "the exclusion of lesbian, gay, and bi-sexual (LGB) people from the practice of law."[80] It is the LSBC alone, and not TWU, that has the authority to exclude people from practicing law in BC. The LSBC must exercise this authority on the basis of academic and professional credentials, not on the basis of sexual orientation or religion.

45. The LSBC believes its approval of TWU's law school would jeopardize "the public perception and legitimacy of the legal profession".[81] It further worries about "[t]he public's faith and confidence in" and "public respect for, and acceptance of" the administration of justice.[82] If *Charter* rights can be disregarded on account of "public perception", Canadians' freedoms are in grave jeopardy.[83]

Date: July 24th, 2015

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[76] Out for Kicks is a Vancouver soccer club "for LGBTQ players and their allies". http://ofk.outforkicks.ca/leagues/3196/pages/95517.

[77] *TWU v. BCCT*, at paras. 25, 28, 32-35, 42-43. The LSBC seeks to avoid the precedent of *TWU v. BCCT* by stating that it was focused on discrimination in public school classrooms while in this case, the LSBC is focused on alleged discrimination at TWU. LSBC Response, paras. 228-29. However, Supreme Court of Canada did address this focus on alleged human rights violations at TWU by expressly finding that neither the *Charter* nor B.C. *Human Rights Act* applied to TWU. *TWU v. BCCT* at para. 25.

[78] *See e.g.* LSBC Response, paras. 207-17, 263-72, 279 ("TWU seeks to *impose* the commitments found in its Covenant on prospective law students, not as a Church or a private organization, but in the context of issuing secular law degrees...." [Empasis added]).

[80] LSBC Response, paras. 3-4.

[81] LSBC Response, para. 249.

[82] LSBC Response, paras. 249-50.

[83] *See TWU v. NSBS*, at para. 15: "The refusal to accept the legitimacy of institutions because of a concern about the perception of the state endorsing their religiously informed moral positions would have a chilling effect on the liberty of conscience and freedom of religion. Only those institutions whose practices were not offensive to the state-approved moral consensus would be entitled to those considerations."

Authorities Cited

1. *Trinity Western University v. B.C. College of Teachers*, 2001 SCC 31
2. *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16
3. *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1
4. *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313
5. *Professional Institute of the Public Service of Canada v. Northwest Territories (Commissioner)*, [1990] 2 S.C.R. 367
6. *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295
7. *R. v. Oakes*, [1986] 1 S.C.R. 103
8. *Doré v. Barreau du Québec*, 2012 SCC 12