Court of Appeal File No.: CA43367
Supreme Court File No. 149837
Vancouver Registry

COURT OF APPEAL

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

APPELLANT/RESPONDENT

AND:

TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT

RESPONDENTS/PETITIONERS

AND:

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

INTERVENERS

FACTUM OF THE INTERVENERS THE EVANGELICAL FELLOWSHIP OF CANADA AND CHRISTIAN HIGHER EDUCATION CANADA

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OPENING STATEMENT

The Evangelical Fellowship of Canada and Christian Higher Education Canada are representatives of Canada's evangelical community and its higher education institutions.[1] Evangelicals have a long history of being excluded and discriminated against by majority communities – both religious and not. These intervenors bring that perspective to the questions of law at issue in this appeal. Codes of conduct are of particular importance to evangelical communities and are categorically within the scope of freedom of religion as understood both legally and historically. However well-intentioned, government actions that have the effect of repressing or stigmatising the exercise of an evangelical community's right to associate on the basis of faith-based rules of conduct represent a direct interference with freedom of religion.

The grand bargain between Roman Catholics and Protestants which made Canada possible included a guarantee of denominational schooling for minority communities. Religious education rights were universalized under the *Charter*, and *TWU v. BCCT* properly focussed on whether there was any genuine concern with the qualifications of TWU graduates. Far from being eclipsed by social or legal changes, the principles in *TWU v. BCCT* were reaffirmed and deepened in *Loyola* and *Saguenay* last year.

The use of governmental regulators to impose a majority view of what constitutes a legitimate code of conduct for a religious community is a straightforward breach of freedom of religion. The claim that this freedom must be 'balanced' against state objectives in protecting other minorities confuses categories of rights and erects conflicts where none exist. Evangelicals have most frequently encountered opposition when their faith required different responses to issues on which the majority have held opposing views in good faith, such as loyalty to the established church and/or state, and participation in state-sanctioned war. The fact that same-sex relationships attract majority social support and state-sanctioned status does not reduce the evangelical community's constitutional right to abide by a code of conduct within its own voluntary faith-based educational community.

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[1] EFC is the largest organization of Canadian evangelicals, gathering though its affiliates about 2.1 million Canadians. CHEC represents virtually all evangelical higher education institutions.

PART 1 - STATEMENT OF FACTS

1. These interveners make no comment as to any questions of fact in the case.

PART 2 - ISSUES ON APPEAL

2. These interveners focus their submissions on the perspective of the evangelical community, and particularly that of evangelical higher educational institutions, on the legal issues raised by the parties.

PART 3 - ARGUMENT

A. Codes of Conduct are intimately connected with Evangelical faith

3. EFC's 41 member denominations include a catalogue of European religious minorities whose beliefs and practices separated them, from their genesis, from established (and frequently state-sanctioned) churches, resulting in a long history of persecution. These include TWU's own denomination of evangelical free churches and various Baptist, Mennonite, Methodist, and Wesleyan denominations. This pattern of persecution continued in pre-Confederation Canada where evangelical "nonconformists" could not hold church property in perpetual succession until 1828, and were banned from becoming lawyers until 1833.[2] Evangelicals have since participated in the legal community along with people from other faiths. To now reject lawyers who graduate from a religious institution is just as much of a religious exclusion as the individual religious test enforced in the nineteenth century.

4. The scope of the guarantee of freedom of religion is "derived from its history"; similarly, freedom of association "has its roots in the protection of religious minority groups."[3] Evangelicals have always been, and remain, a "minority religious subculture"[4] who have depended on a robust freedom of religion which protects "codes of conduct",

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[2] *TWU v. The Law Society of Upper Canada*, 2015 ONSC 4250, at para. 22; (U.C.) 9 Geo. IV, c. 2 (1828); S.U.C. 1833, c. 13; *Congrégation des témoins de Jéhovah v. Lafontaine (Village)*, 2004 SCC 48 at 66 (four judge dissent, but not on this point).

[3] *Mounted Police Association v. Canada*, 2015 SCC 1 at paras. 35, 56, 57, 48 ("*MPA*").

[4] Reasons for Judgment below ("*RFJ*"), para. 24 [Appeal Record ("AR") p. 422]. Reimer expert Affidavit generally and para. 27 [Joint Appeal Book ("JAB") Vol. 4, pp. 1363-1375]. Greenman expert Affidavit para. 38 [JAB Vol. 4, p. 1334].

"practice" and "teaching and dissemination" from all state coercion, including "indirect forms of control which determine or limit alternative courses of conduct available."[5]

5. From an evangelical perspective, the Decision has the straightforward effect of excluding, intimidating and stigmatising those who seek to educate or be educated in the law in an evangelical educational environment. It is no different in its effect than the previous attempt to similarly treat the evangelical education of teachers. The fact that multiple benchers stated,[6] and the Law Society's litigation position claims,[7] a sincere belief that refusing approval will encourage TWU to abandon or revise the Community Covenant, endorses the categorisation of the issue as one of freedom of religion.

6. The signal sent by the Decision has had immediate effect. The BC Human Rights Tribunal has already had to sanction one employer for "egregious" religious harassment and discriminatory hiring when, in September 2014 (at the height of media coverage of the Law Society referendum), the employer cited the Community Covenant as the reason why "graduates from Trinity Western University are not welcome in our ... company."[8]

7. Democratic sanction for majority views has frequently been invoked in support of interference with minority rights. This Court properly recognized that the democratic support for the Law Society's former citizenship requirement did not justify that unconstitutional barrier to a lawyer's participation in "the administration of justice".[9] The force of popular opinion in the record in the matter now under review is similarly astonishing and cause for concern. The reversal of the benchers' principled decision only after the SGM and referendum, conducted in the shadow of re-election less than a year later, from these intervenors' perspective adds another chapter in the long history of popular movements

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[5] *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 at 336-337 ("*Big M*").

[6] Bencher speeches: JAB Vol. 3 p. 843 lines 9-11 (Arvay); p. 845 lns. 6-9 (Maclaren); p. 851 lns. 18-20 (Lloyd); p. 864 lns. 1-4 (Ward). Press release: JAB p. 884, fourth paragraph (Lindsay). Meeting minutes p. 949, third-last paragraph (Crossin)

[7] Law Society Amended Petition Response, para. 253 [AR, p. 72]

[8] *Paquette v. Amaruk*, 2016 BCHRT 35 at paras. 35, 39, 43, 44, 51, 86-88, 100.

[9] A special committee of the Benchers unanimously recommended ending the exclusion of non-citizens in the 1980s. The Benchers narrowly rejected the recommendation and were affirmed by the membership at an SGM. This court overturned the citizenship requirement in *Andrews v. Law Society* (1986), 2 B.C.L.R. (2d) 305 (C.A.), aff'd [1989] 1 S.C.R. 143.

against minority religious practice. Premier Duplessis similarly invoked popular opinion in cancelling Mr. Roncarelli's liquor license by invoking a "duty ... in conscience... to fulfill the mandate that the people had given me and renewed with an immense [electoral] majority."[10]

B. Communal practice of evangelical belief is constitutionally protected

8. "Religion is about religious beliefs, but also about religious relationships".[11] Since Roman times, Christians have self-defined, in part, through statements of faith and related codes of conduct. For evangelicals, "the practice of faith cannot be separated from personal obedience to standards of sexual conduct."[12] Codes of conduct strengthen Canadian evangelicalism[13] – an objective which *Loyola* confirms is constitutionally protected.

9. The liberal democratic solution to disagreements – hard-learned after centuries of religious wars – is the recognition of the freedom for sub-state communities to subscribe to beliefs **and** practices which may conflict with those of the majority. *TWU v. BCCT* properly rejected the attempt to characterize the mandatory Community Covenant as falling outside s. 2(a) protection.[14]

10. Respect for freedom of religion also requires the disciplined exercise of genuine state neutrality to prevent the use of coercive state power in the enforcement of majority beliefs or practices.[15]

11. Many religious beliefs and practices – including positive and negative injunctions regarding movement, diet, occupation, dress and other subjects – will not be palatable to the

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[10] *Roncarelli v. Duplessis*, [1959] S.C.R. 121 at 134 (counsel's translation of testimony).

[11] *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12, at para. 59 ("*Loyola*"). See also *R. v. Edwards Books*, [1986] 2 S.C.R. 713 at 808*i-j*.

[12] *TWU v. Nova Scotia Barrister's Society*, 2015 NSSC 25 ("*TWU v. NSBS*") at footnote 17.

[13] Reimer Affidavit. [JAB Vol 4, pp. 1363-1375]; Longjohn Affidavit [JAB Vol 7 pp. 2227-2234]

[14] The belief/conduct "line" at para. 36 of *TWU v. BC College of Teachers*, 2001 SCC 31 ("*TWU v. BCCT*") related to the speculative fear that TWU graduates would discriminate in the classroom ("conduct"). The SCC clearly accepted that the mandatory nature of the Community Covenant was protected "belief". The same remains true today.

[15] Zagorin, P., *How the Idea of Religious Toleration Came to the West* (Princeton U.P. 2003) at p. 233; *Mouvement laïque québécois v. Saguenay*, 2015 SCC 16 ("Saguenay").

general population. Everyone is free to leave a religious community or to create a new one without fear of reprisal. The state may not force any religious community to include someone who rejects its tenets. There is nothing legally offensive with the statement that "TWU is not for everybody." Exposure to opposing viewpoints and even minority stress is an unavoidable feature of living in a pluralistic society.[16]

C. Protected communal religious practice includes institutional practice

12. No party suggests that the Law Society should impose a religious test for ongoing membership. One's adherence (old or new) to any religious belief – or none – is acknowledged as being irrelevant to competence as a lawyer. Nevertheless, the Law Society's position is that it welcomes evangelical law students and lawyers notwithstanding their religious beliefs and practices regarding sexuality, except if they were to obtain their legal education in a religious educational community.[17]

13. The proposition that it is acceptable for the Law Society to exclude evangelicals *as a group,* while acknowledging that it must respect them *as individuals*, is regressive and contradictory.[18] This would adopt an atomized approach to freedom of religion that is inconsistent with the very nature of the right and was properly rejected in *TWU v. BCCT* for reasons re-affirmed in *Loyola*:

> To tell [an evangelical] [university] how to [manifest] its faith undermines the liberty of the members of its community who have chosen to give effect to the collective dimension of their religious beliefs by participating in a denominational [university].[19]

14. *Loyola* also held that "measures which undermine the character of lawful religious institutions and disrupt the vitality of religious communities represent a profound interference with religious freedom." The Law Society, by contrast, perceives only a very

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[16] *TWU v. BCCT* at para. 25; *Chamberlain v. School District No. 36*, 2002 SCC 86 at paras. 64-66 ("*Chamberlain*"); *S.L. v. Commission scolaire des Chênes*, 2012 SCC 7 at para. 40 ("S.L."); *TWU v. NSBS*, at paras. 8, 180, 204-205.

[17] Law Society factum paras. 166-168; Petition Response paras. 212-13, 229, 293 [AR pp. 65, 67-68, 77].

[18] *MPA* para. 62. Communal religious rights, like language rights, can by definition only be exercised in community: *R. v. Beaulac*, [1999] 1 S.C.R. 768, at para. 20.

[19] *Loyola*, para. 62.

minor impact, referring to the Community Covenant as "not required" or "not necessary."[20]

15. Students, faculty, and staff choose to commit to the Community Covenant which in turn creates a community of mentors, friends, and co-labourers with a common religious purpose. This is something that can be achieved *only communally*. A handful of evangelicals at each of Canada's public law schools cannot recreate what will be available at TWU Law.[21]

16. TWU is Canada's flagship evangelical university,[22] and the only one which offers an education in nursing and law from an underlying Christian viewpoint. TWU's distinctive character and ability to serve the EFC's 2.1 million evangelicals will be compromised if it cannot preserve its unique Christian character through all available means. Most importantly, an evaluation of an evangelical code of conduct must accept the legitimacy of, and seek as much as possible to adopt, an evangelical perspective.

D. The *Charter* guarantees a right to religious education

17. Delegitimising evangelical education constitutes a direct attack on the right of CHEC's members to continue separate higher education programs. The same legal logic would justify closing down all religious grade schools in Canada.

18. The Supreme Court's recent jurisprudence confirms that:

A. state-run public schools must have no religious indoctrination[23]; and

B. members of religious groups have an equally jealously guarded right under the Constitution and international law to create religious educational institutions where the religious group determines belief and conduct requirements for administrators, staff, and students.[24]

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[20] *Loyola* paras. 61, 64, 67; Petition Response paras. 261, 273, 282, 284 [AR pp. 72-76].

[21] *TWU v. BCCT* at paras. 3, 23, 24, 73; *Loyola* at para. 6 expressly recognized teachers' rights; codes of conduct for religious school teachers are valid: *Caldwell v. Stuart*, [1984] 2 S.C.R. 603; *Daly v. Ontario (AG)* (1999), 44 O.R. (3d) 349 at 362 (C.A.).

[22] Reimer Affidavit, at para. 54 [JAB Vol. 4, p. 1374].

[23] *S.L.* and citations therein including at paras. 19-20.

[24] (1) *Charter* s. 2(a): *Loyola* (including concurring minority) and *TWU v. BCCT*. (2)

19. The *Charter* demands symmetry between these principles. As the SCC held in *Loyola*, "an essential ingredient of the vitality of a religious community is the ability of its members to pass on their beliefs to their children, whether through instruction in the home or participation in communal institutions."[25]

20. The Law Society's position calls for a state monopoly over legal education, a monopoly which the existing law deans seek to advance. This is troubling because:

> Schooling, no matter how liberal, no matter to what extent it incorporates the ideal of liberal education, nevertheless involves the transmission of culture.[26] Schooling never was, never is, and never can be value-free. Therefore the question of who controls the education of the young in schools is of crucial importance. A state-controlled system of education is inherently illiberal and undemocratic.[27]

21. Indeed, Canada's measures to prevent cultural and religious minorities from educating their own people has now been characterised as "cultural genocide."[28]

22. In a free and democratic society, the state is not the sole educator. Private institutions are equally entitled to prepare graduates for service to the broader society, in respect of which the state regulates only educational (not admission or theological) standards.[29]

23. This Court should refuse to endorse the popular imposition on TWU of the type of dilemma all too often forced on minority religious groups unnecessarily and unjustly: to choose between its integrity as an evangelical community and providing an education in the law. Endorsing that approach would have far reaching consequences beyond TWU and to

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Constitution Act, 1867, s. 93 – a "bill of rights for the protection of minority religious groups" which reflected the political-religious compromise essential to Confederation: *Reference Re Bill 30*, [1987] 1 S.C.R. 1148 at 1173-1174; Hogg, P. *Constitutional Law of Canada*, loose-leaf, 5th ed. (Toronto: Thomson Reuters Canada, 2007-) p. 57-3 ("Hogg")). (3) Universal Declaration of Human Rights Article 26(3).

[25] Hogg at 57-19; *Loyola*, at para. 64 (emphasis added); see also para. 33.

[26] Cramton R. "The Ordinary Religion of the Law School Classroom", 29 J. L. Educ. No. 3 (1978) at 247. Each generation has its own orthodoxy, which evolves over time.

[27] Thiessen, E. *In Defence of Religious Schools and Colleges* (Montreal & Kingston: McGill-Queen's University Press, 2001), p. 242 ("Thiessen").

[28] Summary of the Final Report of the Truth and Reconciliation Commission of Canada (Ottawa: TRCC, 2015) at 1.

[29] Thiessen at p. 224.

other evangelical institutions contributing to Canadian society, including CHEC's member institutions, all of which affirm the EFC Statement of Faith, and 31 of which have codes of conduct similar to TWU.[30]

E. The public interest cannot contradict the evangelical community's constitutional right to determine TWU's admissions policy

24. Today's benchers are seeking to turn away from the Law Society's well-documented history of excluding Asians, women and aboriginals from the bar which was achieved through purported exercise of an "uncontrollable discretion" over admissions and changing admission rules *once applications were pending.*[31] In a decision which this court failed to overturn, the benchers also purported to utilize the "good repute" element of their public interest jurisdiction to exclude a communist.[32]

25. Despite the benchers' sincere desire to advance the interests of LGBTQ persons in the legal profession, the history in this case has broad similarities to previous experiences. Here, the benchers enacted a new rule to permit them to reject all TWU graduates *while TWU's application was pending with the FLSC.* After making a principled decision in TWU's favour, the benchers – after the referendum – reversed themselves, purporting to exercise a vaguely defined public interest discretion against a religious minority, and now submit to this court that "the Benchers' conclusion that either outcome is reasonable must be accepted."[33]

26. The public interest must take its content not from the Law Society membership's intolerance of evangelicals, but from constitutionally guaranteed freedoms. *Charter-*

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[30] RFJ 13-14.

[31] Brockman, J. "Exclusionary Tactics: The History of Women and Visible Minorities in the Legal Profession in BC" in Foster and McLaren, eds., *Essays in the History of Canadian Law: British Columbia and the Yukon, 6ed.* (Toronto: The Osgoode Society, 1995) 508. Tong, D. "A history of exclusion: the treatment of racial and ethnic minorities by the LSBC in Admissions", *The Advocate*, Vol. 56 Part 2 (March 1998) 197, particularly at 198-200.

[32] *Re Martin*, [1949] 1 D.L.R. 105 (LSBC); aff'd *Martin v. LSBC*, [1950] 3 D.L.R. 173 (B.C.C.A.). Upon making the law society's formal apology in 1998, treasurer Trudi Brown stated: "'It's a sorry tale,'... But it could not happen now because 'we are only concerned if a person is competent.': Pue, W. "Banned from Lawyering: William Martin, Communist" (2009) 162 *BC Studies* 111 at 136 (emphasis added).

[33] RFJ 29, 32; Law Society factum, para. 151, emphasis added.

compliant bounds to legislative grants of discretion are presumed.[34]

27. If "admissions policies" of religious schools can justify rejecting their graduates under a "public interest" discretion, it is difficult to see how that should apply only to the legal profession. Rather than following its duty to "respect" religious difference, the state would be obliterating religious difference – a direct attack on the very purpose for the existence of religious schools.[35]

F. *Doré* is not an invitation to breach constitutional rights

28. Under *Doré*, as under *Oakes*, the state bears the burden to prove minimal impairment.[36] The flexibility of the *Doré* administrative balancing framework is not an invitation for state actors to deny *Charter* rights vindicated in previous litigation in the hope that a future court might uphold the breach as a reasonable balance.[37] The evangelical community is fighting this case a mere 15 years after *TWU v. BCCT* despite the absence of any of the *Bedford* factors: (1) the Law Society concedes that TWU graduates would be fit to practice and would not discriminate, and (2) the *TWU v. BCCT* approach of reconciling rights has been repeatedly reaffirmed.[38] The Law Society is engaging in precisely the reasoning prohibited by the SCC by focusing on who gets in to TWU rather than the quality of the graduates who come out.

29. From the perspective of these intervenors, healthy skepticism should be applied to rationalisations – however widely applauded – for decisions that adversely affect minority religious communities in their exercise of lawful conduct. Special pleading asserting particular social settings or roles especially needs to be rejected as such claims have historically been used against minority religious adherents in order to exclude them from occupations for which they were otherwise qualified. The Law Society's rationalisation for the former citizenship requirement had the same logical character: lawyers have a special role in society that justifies a citizenship requirement. Indeed, robust institutional diversity

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[34] *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038 at 1079.
[35] e.g. Law Society factum, at paras. 99, 163-166, 173. *Loyola*, at para. 43, 54.
[36] *Loyola*, at paras. 39, 40 (citing *Doré v. Barreau du Québec*, 2012 SCC 12 at para. 5).
[37] As suggested by one bencher at the April meeting: JAB Vol. 3, pp. 878-879.
[38] E.g. *Carter v. Canada*, 2015 SCC 5 at para. 132. *TWU v. BCCT* was also cited in *Doré*.

may be *most* important in disciplines closest to the levers of power and social change, such as the teaching and legal professions.

G. 'Equal access' cannot be imposed upon TWU

30. The Law Society repeatedly seeks to impose "equal access" obligations on TWU.[39] TWU is not government and bears no such burden.[40] Such an approach would directly undermine the religious purpose of the school which is to serve a particular religious minority and, in doing so, in part promote the school's religion to those students who choose to attend, as endorsed by the SCC.[41]

31. In any event, as acknowledged in the Nova Scotia decision, state-sponsored exclusion of one otherwise-qualified group is "not how social progress is achieved in a liberal democracy."[42] On this occasion, the defence of one minority is being misdirected against evangelicals. The Law Society recognizes that the bar should be "representative"; Christian organizations are seeking Christian-trained lawyers.[43] The Law Society's Decision, if upheld, will diminish diversity within the profession rather than increase it.

H. The Law Society must abstain from considering the Community Covenant

32. The pluralist secular state must "respect" meaningful diversity in religious education institutions, "not ... extinguish them". "True neutrality presupposes abstention."[44]

33. The intervenors as evangelical organisations ask that the assertion that acceptance of an application for accreditation would signal state approbation of the Community Covenant be assessed in light of the obvious weight of popular opinion in both this and the prior case. In both cases, litigation was required because of the rejection of TWU's applications on grounds other than professional standards.

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[39] e.g. Law Society factum, at paras. 170, 173-176, 181.

[40] TWU factum at 128-140.

[41] *Loyola*; *TWU v. BCCT*; *Caldwell v. Stuart.*

[42] TWU v. NSBS, at pars. 247, see also para. 263.

[43] Law Society of BC, *Towards a more representative legal profession* (June 2012). Epp-Buckingham Affidavit at para. 78 [JAB Vol. 3 p. 978]

[44] *Loyola* paras. 43, 45; *TWU v. NSBS* para. 19; *Saguenay* paras. 71-72 and 134

34. The Law Society's reliance on public confidence to justify breaching evangelicals' rights is a call to appease intolerance of a minority faith's sincere standard. The proper response is to assure the public that the Law Society, in accepting TWU law graduates, is abstaining from expressing any view on the Community Covenant.[45] By contrast, rejecting TWU graduates *because of their communal religious practices* breaches the Law Society's duty of neutrality and says to Canadians that evangelical "religious practices or beliefs [are] less important or less true than the practices of others" which in turn "den[ies] [evangelicals'] equal worth."[46]

35. Open secularism is the lifeblood of robust pluralism.[47] "[T]he autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection" of s. 2(a)".[48] A number of benchers even went so far–doubtless in good faith from their perspective—as to state that TWU should *change* its community covenant.[49] This is an unconstitutional objective which is fatal at the first step of the *Oakes/Doré* analysis; "[t]he Charter is not a blueprint for moral conformity. Its purpose is to protect the citizen from the power of the state."[50]

PART 4 - NATURE OF ORDER SOUGHT

36. These interveners seek to present oral argument at the hearing of the appeal. They do not seek costs and ask that no order as to costs be made against them.

All of which is respectfully submitted at the City of Vancouver, Province of British Columbia, this 19 day of April, 2016.

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[45] *TWU v. NSBS*, at paras. 15, 254, 258-260, 264.

[46] *Saguenay* at para. 73 (citing Professor R. Moon)

[47] *Chamberlain* at para. 137 (Gonthier J. in dissent, but adopted by majority at para. 3 on this point); see also Maclure J. and Taylor, C. *Secularism and Freedom of Conscience* (Cambridge, MA: Harvard University Press, 2011) at 3, 10-13, 19, 40, 46-48.

[48] *MPA* at para. 64; see also *R. v. Oakes*, [1986] 1 S.C.R. 103 at 136*c-e.*

[49] See footnote 6 above.

[50] *Big M* at 347*c*; *TWU v. NSBS* at para. 10.

LIST OF AUTHORITIES

Other

APPENDIX: ENACTMENTS

The Universal Declaration of Human Rights

Article 26.

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.