SUPREME COURT OF CANADA

Case in Brief:

Law Society of British Columbia v. Trinity Western University

2018 SCC 32 | Judgment of June 15, 2018 | On appeal from the Court of Appeal for B.C.

Trinity Western University v. Law Society of Upper Canada

2018 SCC 33 | Judgment of June 15, 2018 | On appeal from the Court of Appeal for Ontario

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The Law Societies of British Columbia and Ontario had the power to deny approval to a proposed law school that would have required students to follow a religiously-based code of conduct restricting sexual behaviour, the Supreme Court has ruled.

Trinity Western University (TWU) is a private Christian university in Langley, British Columbia. It wants to open a law school. At TWU, all students and faculty have to follow a code of conduct (known as a "covenant") that prohibits sexual intimacy except within marriage between a man and a woman. Students and faculty must follow the covenant the whole time they attend or work at TWU, whether they are on or off campus.

The Law Society of British Columbia regulates lawyers in B.C., while the Law Society of Ontario (formerly known as the Law Society of Upper Canada) does the same in Ontario. Both Law Societies get their powers from the government. One of their roles is to protect the public interest in deciding who can practice law in those provinces. Usually, a person who wants to become a lawyer must have a degree from an approved law school.

TWU applied for approval of its proposed law school in both B.C. and Ontario. In B.C., the Law Society put the decision to a vote by its members (all lawyers already licensed to practice law there). A majority voted against TWU's proposal, and the Law Society passed a resolution to formalize the decision. In Ontario, the Law Society's "benchers" (board of directors) decided not to approve the proposal.

TWU and one of its graduates (who hoped to attend the law school) asked the courts to review the Law Societies' decisions in both provinces. They said that the decisions violated freedom of religion and other rights protected under the *Charter*. In B.C., the B.C. Supreme Court and Court of Appeal ruled for TWU and said that the Law Society's decision was invalid. In Ontario, the Divisional Court and Court of Appeal both ruled for the Law Society.

At the Supreme Court of Canada, the majority ruled for the Law Societies. Justices Rosalie Silberman Abella, Michael Moldaver, Andromache Karakatsanis, Richard Wagner (who was not yet Chief Justice when the cases were heard), and Clément Gascon wrote their reasons together. For them, the question the Court had to answer was whether the Law Societies' decisions not to approve TWU's proposed law school were reasonable. They said that they were. To be considered reasonable, the decisions had to strike a proportionate balance between the religious rights of the TWU community and the Law Societies' objectives to protect the public interest. For the majority, the "public interest" included promoting equality by ensuring equal access to the legal profession, supporting diversity within the bar, and preventing harm to LGBTQ law students. Neither Law Society was stopping someone from following his or her own religious beliefs (including following the covenant if s/he wanted to). They only prevented TWU from enforcing beliefs on other members of the law school community. Because of this, the majority said the decisions did not seriously limit anyone's religious freedoms. As the benefits of protecting the public interest were important, and the limitation on religious rights was minor, the majority said that both decisions reflected a proportionate balance, and were therefore reasonable.

Then-Chief Justice Beverley McLachlin agreed with the majority that the Law Societies' decisions were proportionate and reasonable. However, she disagreed with their approach. In her view, courts reviewing administrative decisions challenged under the *Charter* should first look at whether a *Charter* right (rather than a value) has been breached. If so, the state actor that made the decision has to show that the infringement is reasonable and justifiable in a free and democratic society. Unlike the majority, she considered the limitation on the religious, expressive, and associational rights of the TWU community to be serious. But, in addition to negative effects on diversity and equality within the legal profession, she emphasized that approving TWU's proposal would condone discrimination against LGBTQ people based on sexual orientation. The Law Societies' refusal to condone this discrimination was in keeping with their legal obligations to act in the public interest. In Chief Justice McLachlin's view, these obligations outweighed TWU's claims to freedom of religion.

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Justice Malcolm Rowe agreed with the majority that the Law Societies' decisions were reasonable, but disagreed with both how and why they reached this conclusion. Like Chief Justice McLachlin and the dissent, Justice Rowe said that the analysis must focus on *Charter* rights (rather than *Charter* values). Like them, he also said that the state actor bears the burden of justifying any limit on those rights. In this case, however, Justice Rowe said the Law Societies' decisions did not infringe the *Charter* rights raised by TWU. The TWU community was not just seeking to protect its own beliefs and practices. It wanted the Law Societies to approve a law school where students would be forced to follow Evangelical Christian beliefs – whether they shared these beliefs or not. Justice Rowe said that freedom of religion protects the right to believe in whatever one chooses and to follow those beliefs. But it does not protect the right to impose those beliefs and practices on others. For this reason, he said that TWU's claim fell outside the scope of freedom of religion protected by the *Charter*.

Justices Suzanne Côté and Russell Brown disagreed with the other judges, and would have ruled for TWU. Writing in dissent, they said that the laws that gave the Law Societies their powers limited what they could consider in deciding whether to approve a law school. For them, the decision was only about whether graduates would be fit to practice law (i.e., competent and ethical). Since there was no evidence that the graduates would not be fit, they said the Law Societies should have approved TWU's proposal. In the dissenting justices' view, freedom of religion also protects the freedom to express religious views (for example, through the covenant) and to associate to study law in an educational community reflecting their religious beliefs. They disagreed with Chief Justice McLachlin that approving the proposal meant condoning discrimination. For them, a state actor (like a law society) accommodating a private actor (like a faith-based university) does not mean it supports the private actor's beliefs. If this were so, it would indirectly force private actors to follow the *Charter* (even though the *Charter* only applies to state actors). They noted that it is also in the public interest to accommodate different religious beliefs. They also noted that law societies in other provinces had approved TWU's proposed law school. For Justices Côté and Brown, the Law Societies' decisions seriously limited the religious freedom of members of the TWU community, and they were not justified.

While both the B.C. and Ontario cases had separate histories, they dealt with the same issue and were heard at the Supreme Court on the same days. In the end, eight judges agreed that the Law Societies' decisions limited religious freedoms (the five majority judges, Chief Justice McLachlin, and the two dissenting judges). However, five (the majority) said the limitation was not serious, while three (Chief Justice McLachlin and the two dissenting judges) said it was serious. Six of the eight judges who said there was a limitation said it was reasonable (the five majority judges and Chief Justice McLachlin). One judge (Justice Rowe) said no religious freedoms were infringed.

For more information (case no. 37318/British Columbia and case no. 37209/Ontario):

- Reasons for judgments (British Columbia, Ontario)
- Case information (British Columbia, Ontario)
- Webcast of hearings (British Columbia, Ontario)

Breakdown of the decisions:

- Majority: Abella, Moldaver, Karakatsanis, Wagner and Gascon JJ.
- Concurring (separate reasons): McLachlin C.J. and Rowe J.
- Dissenting: Côté and Brown JJ.

Lower court rulings:

- **British Columbia**
  - Court of Appeal for British Columbia (appeal judgment)
  - Supreme Court of British Columbia (application for judicial review)
- **Ontario**
  - Court of Appeal for Ontario (appeal judgment)
  - Divisional Court of Ontario (application for judicial review)

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