

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT**

**Appellants**

**-and-**

**THE LAW SOCIETY OF UPPER CANADA**

**Respondent**

**MOTION RECORD OF THE PROPOSED INTERVENERS,  
CATHOLIC CIVIL RIGHTS LEAGUE and FAITH AND FREEDOM ALLIANCE  
(Motion for Leave to Intervene)**

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# TAB 1

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT**

**Appellants**

**-and-**

**THE LAW SOCIETY OF UPPER CANADA**

**Respondent**

**NOTICE OF MOTION OF THE PROPOSED INTERVENERS,  
CATHOLIC CIVIL RIGHTS LEAGUE and FAITH AND FREEDOM ALLIANCE  
(Returnable December 11, 2015)**

The Catholic Civil Rights League and Faith and Freedom Alliance (CCRL/FFA) will make a motion to the Honourable Associate Chief Justice Hoy, on Friday, the 11<sup>th</sup> day of December, 2015 at 10:00 am or soon after that time as this motion can be heard, at Osgoode Hall, 130 Queen Street West, Toronto, Ontario M5H 2N5.

**PROPOSED METHOD OF HEARING:**

The motion is to be heard:

- in writing under subrule 37.12.1(1) because it is (*insert one of* on consent, unopposed *or* made without notice);
- in writing as an opposed motion under subrule 37.12.1(4)
- orally

**THE MOTION IS FOR:**

1. An Order granting CCRL/FFA leave to intervene as a friend of the court in the within proceeding on the following terms:
  - a. CCRL/FFA shall serve and file a factum not exceeding 10 pages (or such other length as this Honourable Court may deem appropriate);
  - b. CCRL/FFA shall be permitted to make oral submissions at the hearing not exceeding 10 minutes (or such other duration as this Honourable Court may deem appropriate);
  - c. CCRL/FFA shall not file any additional evidence;
  - d. CCRL/FFA shall not be entitled to, nor subject to, any costs of this motion; and
  - e. Such further and other order as this Honourable Court may deem appropriate.

**THE GROUNDS FOR THE MOTION ARE AS FOLLOWS:**

2. CCRL/FFA rely on the following legislation, Rules or points of law: Rules 13.02 and 13.03 (2) of the *Rules of Civil Procedure*.
3. The grounds upon which CCRL/FFA rely in support of this proceeding are, inter alia, as follows:
  - a. The proceeding raises constitutional and public policy issues that directly impact CCRL/FFA and their members;
  - b. CCRL/FFA are well-recognized, national not-for-profit organizations, with broad identifiable membership bases. The aim of CCRL/FFA is to advocate in support

of law and policy compatible with a Christian understanding of human nature and the common good that supports the presence of Christian beliefs in the public sphere and a rich conception of multiculturalism and religious tolerance;

- c. The Catholic Civil Rights League seeks to advocate in support of law and policy compatible with a Christian understanding of human nature and the common good, and in particular, law and policy that supports the presence of Christian beliefs in the public sphere and a rich conception of multiculturalism and religious tolerance. The Catholic Civil Rights League promotes Catholic teachings by intervening in court cases in support of the rich teachings of the Roman Catholic Church, and the pursuit of such principles and freedoms by participating in public debate on important legal issues facing Canadian society. A significant goal is to advocate for law and policy that respect, support and encourage the presence of religious beliefs, values and cultures, including Christianity, in the public sphere. The Catholic Civil Rights League views such law and policy as essential elements of a free and democratic, and tolerant and rich multicultural Canadian society;
- d. The Faith and Freedom Alliance seeks to promote a Gospel-inspired conception of freedom of religion, conscience and expression, under constitutional and human rights legislation across the country. It also, specifically, seeks to increase public awareness of the *Charter's* preamble, which provides that the *Charter* is founded on the recognition of the "supremacy of God and rule of law", and to raise public awareness regarding secularism and its potential dangers. The Faith and Freedom Alliance has a large and nationally dispersed membership base, which is composed of a number of Christian organizations, of various denominations, as well as individuals. In addition, The Faith and Freedom Alliance's board of directors is comprised of individuals who hold leadership positions in a number of diverse Christian organizations;
- e. The issues in dispute on this appeal include whether the Appellant enjoys freedom of conscience and religion, and whether the Law Society of Upper Canada (the "Society") has made a ruling which is inconsistent and incompatible with those

rights. Moreover, the Society's decision to oppose accreditation of the Trinity Western University ("TWU") law school, and the ruling of the Divisional Court below, have imposed an added burden or encumbrance on the rights of such future applicants or graduates of the proposed TWU law school to practicing law in Ontario, without foundation and contrary to law;

- f. The resolution of the above issue will require this Court to consider and interpret the nature of Canadian secularism and state neutrality, and their limits, having regard to the freedom of conscience and religion and other values and principles enshrined by the *Charter*;
- g. These determinations will have a profound and far-reaching impact that transcends the immediate interests of the parties. As a result of the initiatives and activities described above, CCRL/FFA have special knowledge and expertise regarding these issues and accordingly a demonstrated interest in this application. Furthermore, CCRL/FFA represent interests directly affected by this application. CCRL/FFA are Christian organizations that advocate for the presence of Christian, or religious beliefs and values generally, in the public sphere. If Canadian secularism or state neutrality is interpreted to mean a greater absence of religion in public matters, CCRL/FFA interests and initiatives will be directly and adversely affected;
- h. CCRL/FFA, where appropriate, promote their Christian values by intervening in court cases in support of these values, principles and freedoms and by participating in public debate on important legal issues facing Canadian society;
- i. CCRL/FFA have a demonstrated interest in the subject-matter of this proceeding and either separately or together, have intervened in numerous cases involving the interpretation and application of freedom of religion under the *Canadian Charter of Rights and Freedoms* (the "*Charter*") and the *Québec Charter of human rights and freedoms* (the "*Québec Charter*") including several cases involving issues of secularism, state neutrality, and the constitutional protections afforded to religious

groups and cultures. These issues are engaged by this proceeding and their resolution will transcend the interests of the immediate parties;

- j. CCRL/FFA were accepted and appeared as interveners in previous court applications in Nova Scotia and British Columbia in respect of similar applications for judicial review by Trinity Western University, following the rejections by the Nova Scotia Barristers Society (*Trinity Western University v. Nova Scotia Barristers' Society*, 2014 NSSC 331), and the Law Society of British Columbia (decision pending) of the accreditation of its proposed law school. CCRL/FFA have been accepted as an intervener in the pending appeal of the Nova Scotia decision, scheduled for April, 2016;
- k. CCRL/FFA have the ability to provide submissions that will be useful and different from those of the parties. This case is about the nature of religious pluralism in Canada. CCRL/FFA intend to submit that Canada's democratic and constitutional history promotes pluralistic liberalism, where disagreements and different beliefs amongst Canadians encourage social peace, mutual respect and diversity;
- l. CCRL/FFA have well-established histories of participating in matters of law and public policy, and especially those that involve the *Charter* and its interplay with secularism, religious cultures and the preservation and enhancement of Canada's multicultural heritage. CCRL/FFA will work with other interveners to articulate arguments that will benefit the Court and reduce redundancy;
- m. Subject to efforts prior to the hearing of the appeal to avoid duplication with other party intervenors, CCRL/FFA intend to make some of the following submissions:
  - i. Canada's democratic and constitutional tradition promotes pluralistic liberalism, where disagreements and different beliefs are encouraged and promoted. The law acknowledges such freedoms and encourages respect for a diversity of views.

- ii. Freedom of religion protects collective and group rights. Though religion is often about religious beliefs, it is also about the relationships between individuals that have a common faith (“religio” to bind). Religious corporations, including educational institutions, in community with its staff, students and benefactors, stakeholders, advance a religious way of life that should not be infringed without demonstrable justification.
- iii. TWU and other religious institutions of higher learning enjoy constitutionally protected guarantees of freedom of conscience and religion, and they engage in free academic inquiry. While the observance of codes of conduct may vary at such institutions, the law has acknowledged the right of institutions to maintain such codes as an expression of their community’s faith adherence. It is not within the purview, competence or jurisdiction of the Society by its ruling to effectively demand amendments to the TWU Community Covenant, as that engages it in regulating beliefs, which is unacceptable in Canadian law.
- iv. The Society as a state actor is charged to ensure compliance with the *Charter*, so as to allow freedom of conscience, freedom of religion, freedom of thought, freedom of belief and freedom of expression. The Society’s opposition to the accreditation of the proposed TWU law school failed to balance the competing rights at issue, and imposed a burden or encumbrance on prospective students who may seek to attend TWU’s law school before being accepted into the Society. Such students will now be obliged (i) to petition the Society for entrance, in spite of the previous approval by the Federation of Law Schools approval of the TWU law school; (ii) qualify for admission in another province as a graduate of the TWU law school, and seek admission by “crossing over” from that province to the Society in Ontario; or (iii) await some other proposition before being allowed to practice law in Ontario as a TWU law school graduate. Such burdens are incompatible with the Society’s stated vision and values. They impose a discriminatory



imposition on TWU and/or prospective law students of that institution, which poses a threat to a free and democratic society.

- v. The Society cannot challenge the religious understanding, beliefs and commitments of the unique TWU community. The pre-determined denial of accreditation of an otherwise qualified law school, so as to disqualify graduates from entrance into the Society would be an unacceptable intrusion into the religious and conscientious liberty of such individuals. This court should engage in a reconciliation of rights so as to advance the goals of a truly authentic pluralistic Canadian society, rather than engage in trumping such recognized rights by other interests. The denial of accreditation based on the TWU Community Covenant further contravenes section 3.1 of the federal *Civil Marriage Act*, SC 2005, c 33.
- vi. Other existing Canadian Christian universities may seek accreditation for new or current academic programs. Christian universities in other jurisdictions may already provide degrees in law, for which graduates may seek to use for qualification and entrance to the Society. The Society should not be allowed to deny acceptance of such graduates in the absence of specific evidence of their inability to meet the admission standards of the Society.
- vii. The Supreme Court of Canada's decision in *BC College of Teachers v Trinity Western University*, 2001 SCC 31, and *R v NS*, 2012 SCC 72, requires state actors, to reconcile competing rights and values to avoid a conflict between them.
- viii. In *Syndicat Northcrest v. Amselem* 2004 SCC 47 the Court provided that religious beliefs should receive special protection because they are part of an individual's deeply-rooted cultural identity, connecting him or her to a larger cultural or religious community. If such beliefs are sincerely held, having a nexus with religion, a Court or quasi-judicial body should not adjudicate or

interfere with such beliefs or religious obligations. A broad and expansive approach to religious freedom should not be narrowly construed prematurely.

- n. CCRL/FFA have an established legal knowledge and expertise regarding the constitutional limits of secularism under the *Charter* and *Quebec Charter*. The Supreme Court of Canada recognized this specific legal knowledge and expertise having granted CCRL/FFA leave to intervene in three of the Court's recent decisions released in 2015: *Mouvement laïque québécois, et al. v. City of Saguenay, et al.*, 2015 SCC 16, *Loyola High School v Attorney General of Québec*, 2015 SCC 12, and *Carter v. Canada (Attorney General)*, 2015 SCC 5.
- o. Furthermore, CCRL/FFA have established knowledge and expertise regarding human rights legislation and tribunals, which the Supreme Court of Canada recognized by granting the CCRL and FFA leave to intervene in *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11, and previous cases, for which such issues are also engaged by this appeal.
- p. CCRL/FFA are not-for-profit organizations and have limited financial resources. They rely upon fundraising, donations and the *pro bono* assistance of their members and volunteers to fulfill their important mandates.
- q. The relief sought by CCRL/FFA will not unduly complicate this appeal, nor does CCRL/FFA seek to add to the record of the appeal.
- r. CCRL/FFA do not seek costs and seek that no costs be ordered as against them.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- 1) Affidavit of Christian Elia sworn on November 30, 2015, and filed with this notice;

- 2) Such further and other material as counsel may advise and this Court may permit.

DATE: November 30, 2015

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Appellants

Respondent

Court of Appeal File No. C61116

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**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at  
Toronto

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**NOTICE OF MOTION**  
**(Returnable December 11, 2015)**

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# TAB 2

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT**  
Appellants

-and-

**THE LAW SOCIETY OF UPPER CANADA**  
Respondent

**AFFIDAVIT OF CHRISTIAN ELIA, ON BEHALF OF THE PROPOSED  
INTERVENERS, CATHOLIC CIVIL RIGHTS LEAGUE AND  
THE FAITH AND FREEDOM ALLIANCE  
(Returnable December 11, 2015)**

**I, CHRISTIAN ELIA, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:**

1. I am the Executive Director of the Catholic Civil Rights League (“CCRL”). I make this Affidavit on behalf of the CCRL and the Faith and Freedom Alliance (“FFA”). The CCRL together with the FFA (collectively, the “Moving Parties”), seek leave to intervene in this appeal. I have knowledge of the facts and matters set out below, except where this knowledge is based on information and belief, in which case I believe them to be true. The Moving Parties have authorized me to make this affidavit in support of their motion for leave to intervene in this appeal.
2. I have served on the Board of the CCRL since 2011. On June 30, 2014 I assumed the role of Executive Director, with duties including the supervision of communication and social media activities for the organization. I hold four degrees, including a PhD in advanced education from the University of Toronto. I currently serve as an assistant professor at Niagara University. I

have an extensive background in Catholic leadership, which includes postings in educational and ministerial settings including that of Director of the Office of Catholic Youth for the Archdiocese of Toronto from 2008 to 2011.

### **I. BACKGROUND AND EXPERTISE OF CCRL AND FFA**

3. The CCRL is a national lay Catholic organization committed to combating anti-Catholic defamation, working with the media to secure a fair hearing for Catholic positions on issues of public debate, engaging those interests with governmental bodies, and intervening in court challenges in support of law and policy compatible with a Catholic understanding of human nature and the common good.
4. The CCRL was founded in 1985 as an independent lay organization the CCRL received permission from the late Gerald Emmett Cardinal Carter to use the name Catholic. With a Board of Directors and membership that spans the country, the CCRL is faithful to the teachings of the Roman Catholic Magisterium and works in cooperation with local bishops across Canada.
5. The CCRL promotes its objectives through education, conferences, public forums, seminars, publishing newsletters or journals, establishing and supporting local groups and chapters, organizing petitions, protests and media campaigns, and by supporting Christian advocacy.
6. The CCRL seeks to advocate in support of law and policy compatible with a Christian understanding of human nature and the common good, and in particular, law and policy that supports the presence of Christian beliefs in the public sphere, as part of a rich conception of multiculturalism and religious tolerance. The CCRL promotes Catholic teachings by intervening in court cases in support of the rich teachings of the Roman Catholic Church, and the pursuit of such principles and freedoms by participating in public debate on important legal issues facing Canadian society. We support and encourage the presence of religious beliefs, values and cultures, in particular Christianity, in the public sphere. The CCRL views such law and policy as essential elements of a free and democratic, and tolerant and rich multicultural Canadian society.
7. I am advised by Philip Horgan, counsel for the Moving Parties, and verily believe that the FFA was established in 2004, and is a federally-incorporated, national, non-denominational Christian organization. It seeks to promote a Gospel-inspired conception of freedom of religion,

conscience and expression, under constitutional and human rights legislation across the country. It also, specifically, seeks to increase public awareness of the *Charter's* preamble, which provides that the *Charter* is founded on the recognition of the “supremacy of God and rule of law”, and to raise public awareness regarding secularism and its potential dangers. The FFA has a large and nationally dispersed membership base, which is composed of a number of Christian organizations, of various denominations, as well as individuals. In addition, FFA’s board of directors is comprised of individuals who hold leadership positions in a number of diverse Christian organizations.

8. The CCRL and FFA have a well-established history of participating in matters of law and public policy. The CCRL has intervened in more than forty court cases, on issues such as secularism, public and private religious education, free speech, same sex marriage, prostitution, and religious and conscience rights.

9. The FFA has approximately ten years of experience in interventions, and has been involved in at least six cases at the Supreme Court of Canada, as well as further cases at lower court levels.

10. Most recently, the Moving Parties intervened in three Supreme Court of Canada decisions released in 2015, in *Carter v. Canada (Attorney General)*, 2015 SCC 5, *Loyola High School v. Attorney General of Quebec*, 2015 SCC 12, and *Mouvement laïque québécois v. Saguenay*, 2015 SCC 16, all of which engaged issues of the question of state neutrality in light of the freedom of religion guaranteed by the *Charter of Rights and Freedoms*, constitutional protections afforded to religious groups and cultures, and the legality of religious beliefs in public institutions.

11. The Moving Parties were accepted and appeared as interveners in previous court applications in Nova Scotia and British Columbia in respect of similar applications for judicial review by Trinity Western University, following the rejections by the Nova Scotia Barristers Society (*Trinity Western University v. Nova Scotia Barristers’ Society*, 2014 NSSC 331 (appeal pending in NSCA 2015 C.A. No. 438894, hearing set for April 2016), and the Law Society of British Columbia (Vancouver Registry No. S-149837 BC Supreme Court, decision pending) on the accreditation of TWU’s proposed law school. The Moving Parties have further been accepted as an intervener in the pending appeal of the Nova Scotia decision by the NSBS, scheduled for April, 2016.

12. It should be noted that the Divisional Court below dismissed the application of the Moving

Parties to intervene in the hearing of the application which is the subject matter of this appeal (*Trinity Western University v. Law Society of Upper Canada*, 2014 ONSC 5541, with a further motion to vary dismissed 2014 ONSC 6220 (CanLii)). The Divisional Court determined that the proposed submissions would likely be adequately covered by other parties or interveners, and added a new factor of “balancing” such interventions, a factor not previously stipulated by the Court of Appeal.

**II. THE MOVING PARTIES HAVE A DEMONSTRATED INTEREST**

13. The Moving Parties have a demonstrated interest in the subject-matter of this appeal. The Moving Parties, either separately or together, have intervened in numerous cases involving the interpretation and application of freedom of religion under the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) and the *Québec Charter of human rights and freedoms* (the “*Québec Charter*”) including several cases involving issues of secularism, state neutrality, and the constitutional protections afforded to religious groups and cultures. I believe that these issues are engaged by this appeal and their resolution will transcend the interests of the immediate parties.

14. The Moving Parties have the ability to provide submissions that will be useful and different from those of the parties. This case is about the nature of religious pluralism in Canada. The Moving Parties intend to submit that Canada’s democratic and constitutional history promotes pluralistic liberalism, where disagreements and different beliefs amongst Canadians encourage social peace, mutual respect and diversity. The Moving Parties have well-established histories of participating in matters of law and public policy, and especially those that involve the *Charter* and its interplay with secularism, religious cultures and the preservation and enhancement of Canada’s multicultural heritage.

15. Furthermore, the Moving Parties have established knowledge and expertise regarding human rights legislation and tribunals, which the Supreme Court of Canada recognized by granting the CCRL and FFA leave to intervene in *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11, and previous cases, for which such issues are also engaged by this appeal.

16. The Moving Parties have also, either separately or together, intervened in numerous cases in the Supreme Court of Canada, and other appellate and trial courts, involving some of the most

significant *Charter* and social issues of the last 20 years. Such issues include secularism, public and private religious education, prostitution, free speech, same-sex marriage, and religious and conscientious freedoms.

17. Some of the cases concerning the *Charter* in which the Supreme Court of Canada and other appellate courts have granted the Moving Parties leave to intervene, either separately or together, include:

Case	Issue
<b>Supreme Court of Canada</b>	
<i>Lee Carter, et al. v. Attorney General of Canada, et al.</i> 2015 SCC 5	whether Criminal Code provision prohibiting aiding a person to commit suicide infringes ss. 7 or 15 of Charter, and if so, whether infringement is justifiable under s. 1
<i>Mouvement laïque québécois, et al. v. City of Saguenay, et al.</i> 2015 SCC 16	whether recitation of prayer in the presence of religious objects during municipal council meetings infringed the applicant's freedom of conscience.
<i>Loyola High School v Attorney General of Québec</i> 2015 SCC 12	whether the Québec Ethics and Religious Culture program, which became mandatory for Québec schools, offends the <i>Canadian Charter</i> freedoms of conscience and religion of private denominational schools
<i>Canada (AG) v Bedford</i> , 2013 SCC 72	whether provisions in the <i>Criminal Code</i> prohibiting certain prostitution-related activities violate the <i>Canadian Charter</i>
<i>Saskatchewan (Human Rights Commission) v Whatcott</i> , 2013 SCC 11	whether paragraph 14(1)(b) of the <i>Saskatchewan Human Rights Code</i> offends the freedom of expression provision of the <i>Canadian Charter</i>
<i>SL v Commission scolaire des Chênes</i> , 2012 SCC 7	whether the Québec Ethics and Religious Culture program, which became mandatory for Québec schools, offends the freedom of conscience and religion provisions of the <i>Canadian Charter</i> and <i>Québec Charter</i>

Case	Issue
<p><i>Halpern v Canada (Attorney General)</i> (2003), 65 OR (3d) 161 (CA); <i>Barbeau Canada v British Columbia (Attorney General)</i>, 2003 BCCA 251; <i>Hendricks v Québec (Procureur général)</i>, [2002] RJQ 2506 (SC), aff'd (2004), 238 DLR (4th) 577 (CA); and <i>Reference re Same-Sex Marriage</i>, 2004 SCC 79</p>	<p>whether definitions of marriage requiring that the partners be of the opposite sex violate the discrimination provision of the <i>Canadian Charter</i></p>
<p><i>Chamberlain v Surrey School District No 36</i>, 2002 SCC 86</p>	<p>whether it is within the jurisdiction of a public school board to refuse to approve educational resource materials on the grounds that the books in question would engender controversy in light of parents' religious objections to the morality of same-sex relationships</p>
<p><b>Courts of Appeal</b></p>	
<p><i>AA v BB</i>, 2007 ONCA 2</p>	<p>whether a court has jurisdiction under the Ontario <i>Children's Law Reform Act</i>, or its own inherent <i>parens patriae</i> jurisdiction, to declare that a child has two mothers</p>
<p><i>Hellquist v Owens</i>, 2006 SKCA 41</p>	<p>whether a newspaper advertisement containing Biblical excerpts critical of homosexuality violated a provincial <i>Human Rights Code</i> provision against the publication of statements that expose a group to hatred, ridicule or belittlement</p>
<p><i>Kempling v British Columbia College of Teachers</i>, 2004 BCCA 535; and <i>Kempling v British Columbia College of Teachers</i>, 2005 BCCA 327</p>	<p>whether the College of Teachers violated a teacher's right to expression under section 2 of the <i>Canadian Charter</i> when sanctioning him for conduct unbecoming a teacher as a result of his public expression of his private views on homosexuality</p>
<p><i>R v Spratt</i>, 2004 BCCA 367</p>	<p>whether provisions of the provincial <i>Access to Abortion Services Act</i> that prohibit public protesting in the vicinity of an abortion clinic are constitutional</p>
<p><i>Ontario (Human Rights Commission) v Brockie</i>, [2002] OJ No 2375 (Div Ct)</p>	<p>whether business owners have a right of conscientious objection under the Ontario <i>Human Rights Code</i></p>



Case	Issue
<i>Trinity Western University v British Columbia College of Teachers</i> (1998), 169 DLR (4th) 234 (BCCA), rev'd [2001] 1 SCR 772	whether it is within the jurisdiction of a teachers' regulatory body to consider whether a private university's community standards embody discrimination against homosexuals

18. Courts of first instance have granted CCRL, leave to intervene in the following cases:

*Trinity Western University v. British Columbia College of Teachers*, [1998] 4 W.W.R. 550 (BCSC)

*Ontario (Human Rights Commission) v. Brockie*, [2002] O.J. No. 2375 (Ont. Div. Ct.);

*Bedford v. Canada*, 2010 ONSC 4264;

*Trinity Western University v. Nova Scotia Barristers' Society*, 2014 NSSC 331 (together with the FFA).

19. More generally, the CCRL has appeared before numerous Parliamentary committees, made submissions to various levels of government, participated in the drafting of legislation, and made submissions to boards, commissions, committees and tribunals, on issues engaging the *Charter* and the freedom of conscience and religion.

### III. OVERVIEW OF THE IMPACT OF THE APPEAL

20. As framed, I understand the issues in dispute on this appeal include whether the Appellant enjoys freedom of conscience and religion, and whether the Law Society of Upper Canada (the "Society") has made a ruling which is inconsistent and incompatible with those rights. Moreover, the Society's decision to oppose accreditation of the Trinity Western University ("TWU") law school, and the ruling of the Divisional Court below, have imposed an added burden or encumbrance on the rights of such future applicants or graduates of the proposed TWU law school to practicing law in Ontario, without foundation and contrary to law.

21. I believe the resolution of the above issue will require this Court to consider and interpret the nature of Canadian secularism and state neutrality, and their limits, having regard to the freedom of conscience and religion and other values and principles enshrined by the *Charter*.

22. These determinations will have a profound and far-reaching impact that transcends the immediate interests of the parties. As a result of the initiatives and activities described above, the Moving Parties have special knowledge and expertise regarding these issues and accordingly a demonstrated interest in this appeal. Furthermore, I believe the Moving Parties represent interests directly affected by this appeal. The Moving Parties are Christian organizations that advocate for the presence of Christian, or religious beliefs and values generally, in the public sphere. If Canadian secularism or state neutrality is interpreted to mean a greater absence of religion in public matters, the Moving Parties' interests and initiatives will be directly and adversely affected.

23. The CCRL has been involved in the issues raised in this appeal since at least 2013. In the context of the Society's dealings on this matter, the CCRL made the attached submission dated March 27, 2014, marked as Exhibit "A" to this affidavit, which outlined a brief synopsis of concerns relating to the Society's treatment of the TWU law school accreditation question as of that date.

#### **IV. THE MOVING PARTIES HAVE A USEFUL AND DIFFERENT PERSPECTIVE**

24. If granted leave to intervene in this appeal, the Moving Parties intend to focus their submissions on the issues concerning secularism, state neutrality, and discrimination, and their interplay with the freedom of religion and the values of pluralism and multiculturalism under the *Charter*.

25. Subject to efforts prior to the hearing of the appeal to avoid duplication with other party interveners, the Moving Parties intend to make some of the following submissions:

a) Canada's democratic and constitutional tradition promotes pluralistic liberalism, where disagreements and different beliefs are encouraged and promoted. The law acknowledges such freedoms and encourages respect for a diversity of views.

b) Freedom of religion protects collective and group rights. Though religion is often about religious beliefs, it is also about the relationships between individuals that have a common faith ("religio" to bind). Religious corporations, including educational institutions, in community with its staff, students and benefactors, stakeholders, advance a religious way of life that should not be infringed without demonstrable justification.

c) TWU and other religious institutions of higher learning enjoy constitutionally protected guarantees of freedom of conscience and religion, and they engage in free academic inquiry. While the observance of codes of conduct may vary at such institutions, the law has acknowledged the right of institutions to maintain such codes as an expression of their community's faith adherence. It is not within the purview, competence or jurisdiction of the Society by its ruling to effectively demand amendments to the TWU Community Covenant, as that engages it in regulating beliefs, which is unacceptable in Canadian law.

d) The Society as a state actor is charged to ensure compliance with the *Charter*, so as to allow freedom of conscience, freedom of religion, freedom of thought, freedom of belief and freedom of expression. The Society's opposition to the accreditation of the proposed TWU law school failed to balance the competing rights at issue, and imposed a burden or encumbrance on prospective students who may seek to attend TWU's law school before being accepted into the Society. Such students will now be obliged (i) to petition the Society for entrance, in spite of the previous approval by the Federation of Law Schools approval of the TWU law school; (ii) qualify for admission in another province as a graduate of the TWU law school, and seek admission by "crossing over" from that province to the Society in Ontario; or (iii) await some other proposition before being allowed to practice law in Ontario as a TWU law school graduate. Such burdens are incompatible with the Society's stated vision and values. They impose a discriminatory imposition on TWU and/or prospective law students of that institution, which poses a threat to a free and democratic society.

e) The Society cannot challenge the religious understanding, beliefs and commitments of the unique TWU community. The pre-determined denial of accreditation of an otherwise qualified law school, so as to disqualify graduates from entrance into the Society would be an unacceptable intrusion into the religious and conscientious liberty of such individuals. This court should engage in a reconciliation of rights so as to advance the goals of a truly authentic pluralistic Canadian society, rather than engage in trumping such recognized rights by other interests. The denial of accreditation based on the TWU Community Covenant further contravenes section 3.1 of the federal *Civil Marriage Act*, SC 2005, c 33.

f) Other existing Canadian Christian universities may seek accreditation for new or current academic programs. Christian universities in other jurisdictions may already provide degrees in law, for which graduates may seek to use for qualification and entrance to the Society. The Society should not be allowed to deny acceptance of such graduates in the absence of specific evidence of their inability to meet the admission standards of the Society.

g) Future Continuing Professional Development programs offered by Catholic or Christian institutions of higher learning may not meet the Society's standards for accreditation. The reasoning of the Society's rejection of the TWU law school may be seen to be equally applicable to providers of legal education programs who may maintain a code of conduct or of entry rules which purportedly offend the sensibilities of a majority of the Society's benchers.

h) The Supreme Court of Canada's decision in *BC College of Teachers v Trinity Western University*, 2001 SCC 31, and *R v NS*, 2012 SCC 72, requires state actors, to reconcile competing rights and values to avoid a conflict between them.

i) In *Syndicat Northcrest v. Amselem* 2004 SCC 47 the Court provided that religious beliefs should receive special protection because they are part of an individual's deeply-rooted cultural identity, connecting him or her to a larger cultural or religious community. If such beliefs are sincerely held, having a nexus with religion, a Court or quasi-judicial body should not adjudicate or interfere with such beliefs or religious obligations. A broad and expansive approach to religious freedom should not be narrowly construed prematurely.

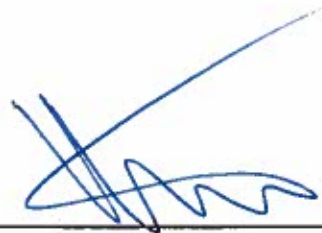
26. The relief sought by the Moving Parties will not unduly complicate this appeal, nor do the Moving Parties seek to add to the record of the appeal. The Moving Parties agree to be subject to the proposed limitation of 10 pages for any factum, and to a limitation of 10 minutes of oral submissions on the appeal.

27. The Moving Parties do not seek costs and seek an Order that no costs be ordered as against them.

28. I make this affidavit in support of the Moving Parties motion for leave to intervene in this appeal and for no other purpose.

**SWORN BEFORE ME**  
at the City of Toronto,  
in the Province of Ontario,  
this 30<sup>th</sup> day of November, 2015.

)  
)  
)  
)



**CHRISTIAN ELIA**



**Philip H. Horgan**  
Barrister, Solicitor, Notary Public

# TAB A

27

This is Exhibit A referred to in the  
affidavit of Christian Elia  
sworn before me, this 30<sup>th</sup>  
day of November 2015

  
A COMMISSIONER, ETC.



**The Catholic Civil Rights League** [www.ccrl.ca](http://www.ccrl.ca)  
**Ligue Catholique pour les Droits de l'Homme**

March 27, 2014

**Submission of the Catholic Civil Rights League to the Law Society of Upper Canada (the "Society") regarding the Acceptance of Potential Graduates of Trinity Western's Law School ("TWU") for Admission to the Society**

I write on behalf of the Catholic Civil Rights League, and on behalf of its members in the province of Ontario. The League is a national non-profit organization, established to provide a fair hearing for positions of Catholic teachings in the public square.

In addition to countering anti-Catholic defamation, the League has had a history of roughly 40 court interventions over the past 25 years, mostly at the Supreme Court of Canada, in support of a robust understanding of religious and conscientious freedom.

This brief submission is prepared to provide a summary of the League's concerns to the Society, and in particular to Convocation, which will meet to determine the accreditation of the TWU law school program.

The League notes as follows:

1. The TWU proposal has been reviewed and has been approved by both the B.C. Minister of Advanced Education, and the Federation of Law Societies of Canada, to whom the power of approval was previously delegated.
2. The proposed opening of the TWU law school would be available to roughly 60 students/year. That represents roughly 3 per cent of potential law school entry positions in Canada, of the roughly 2,000 current entrants in any given year to other Canadian law schools.
3. The TWU law school does not propose to bar entrance to any individual other than on normal academic qualifications. It appears that the focus of inquiry is that the TWU law school, as with the larger TWU campus, has adopted a Community Covenant, which prospective or current students are expected to honour. TWU, as an evangelical Christian university, believes that sexual intimacy is "reserved for marriage between one man and one woman".
4. It is trite law that religious institutions and individuals have the right to define marriage according to their religious doctrines. This is guaranteed in section 3.1 of the federal *Civil Marriage Act*, S.C. 2005, c. 33.
5. In addition, a similar issue was addressed by the Supreme Court of Canada in the case of *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31 (in which the League had previously intervened), which ruled in favour of Trinity Western's teacher education program, which had been challenged by the B.C. College of Teachers for its Community Covenant.

The opposition to the TWU law school proposal does not appear to be based on any assessment of academic shortcoming or inability to deliver a professional law school education. The relevant accreditation authorities have already approved or recommended the TWU application.

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The issue before your Society appears to be whether some decision should be made now, in advance of any application for membership to the Society, so as to prevent a prospective graduate of TWU's law school from becoming a member of the Society.

A denial of recognition of TWU's law school would place your Society at odds with the acceptance of potential TWU graduates by other law societies, such as in Alberta, which appeared to accept the Federation's recommendation in December, and the Federation of Law Societies approval mentioned above.

It should be acknowledged that there is no evidence to suggest that a prospective graduate of the TWU law school may be unable to practise law in the province of Ontario or elsewhere. In fact, it is apparent that many observant religious individuals practise law in Ontario, who are entitled to maintain that marriage be reserved as between a man and a woman, according to their conscience.

The opposition placed before the Society is a perceived "intolerance" of the TWU Community Covenant. That intolerance is perceived as a potential impediment to members of minority sexual orientations, or presumably to single heterosexual students, as it engages a voluntary restriction for students of TWU in respect of sexual relations outside of the traditional understanding of marriage.

TWU, and other religious institutions of higher learning, enjoy constitutionally protected guarantees of freedom of conscience and religion, and they engage in free academic inquiry. While the observance of codes of conduct may vary at such institutions, the law has acknowledged the right of institutions to maintain such codes.

Moreover, it is the League's view that a pre-determined denial of acceptance of graduates of an otherwise qualified law graduate from entrance into your Society would be an unacceptable intrusion into the religious and conscientious liberty of the individual. Such a pre-determination, in our view, is without justification, and contrary to Charter values such as freedom of religion and freedom of speech, and contrary to natural justice. It would also constitute an example of the very hostility to religion and conscience that are contrary to the Society's Statement of Principles concerning the respect for religious and spiritual beliefs.

Ontario is the home of some leading Christian universities, many graduates of which are members of the Society. Presumably, your Society, as with other provincial law societies, may have already recognized graduates of TWU within your ranks, following their later graduation from an existing Canadian law school. In the absence of some evidence of misconduct, what complaints have been raised regarding the demand for a higher standard of education or professional competence, for which the Society has an interest?

The opposition to TWU's law school purports that your Society require an adherence or conformity to norms of thought or belief, a position which maintains a limited notion of "diversity". It is our submission that citizens, including current lawyers within your Society, are allowed to disagree with each other on matters of faithful observance.

A robust pluralism depends on the free exchange of such positions, and the law acknowledges such freedoms. The League submits that your Society is charged to ensure compliance with the Charter, so as to allow freedom of conscience, freedom of religion, freedom of thought, freedom of belief, and freedom of expression.

The Society published a Statement of Principles in Support of Religious and Spiritual Beliefs in 2005, in which religious diversity was recognized as *advancing* the cause of justice, which should govern your current consideration. We submit that opponents to the recognition of TWU law school graduates pose the real menace to a free and democratic society, in that they appear to favour what John Gray described as "convergence liberalism", a forced pseudo social consensus. It is our view that your Society should promote tolerance and respect for difference, especially when it comes to religious and conscientious freedoms.



It is not the mandate or competence of the Society to regulate and police the personal beliefs and convictions of its members and to arbitrarily exclude those from the practice of law who exercise their constitutional and legal rights to express and live by their views, religious or otherwise, on the issue of marriage, morality, or otherwise, in a manner consistent with those rights.

We also note that for those who choose not to observe the TWU Code of Conduct, no existing law school position in Canada has been limited, no existing law school position has been deprived, and there can be no argument that any hardship will be incurred.

The TWU law school is merely an extension of the existing recognition of religious institutions of higher learning available to those who choose to pursue their studies in that context. Law schools based at religious schools of higher learning abound in the United States, and other countries, and have produced graduates of distinction.

It is submitted that the Society should continue to welcome such qualified graduates within its ranks, rather than surrender to a closed or fearful pluralism espoused by opponents of TWU.

Respectfully,



Philip H. Horgan  
Barrister and Solicitor, Member of the Bar of Ontario  
President, Catholic Civil Rights League

**TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT**

**LAW SOCIETY OF UPPER CANADA**

- and -

**Appellants**

**Respondent**

Court of Appeal File No. C61116

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**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at  
Toronto

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**AFFIDAVIT OF CHRISTIAN ELIA**

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Faith and Freedom Alliance**

**Appellants**

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Court of Appeal File No. C61116

**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at Toronto

**MOTION RECORD OF THE PROPOSED INTERVENERS  
CATHOLIC CIVIL RIGHTS LEAGUE AND  
FAITH AND FREEDON ALLIANCE  
(Motion for Leave to Intervene)  
(Returnable December 11, 2015)**

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