

COURT OF APPEAL FOR ONTARIO

BETWEEN

TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT

APPLICANT
(APPELLANT)

AND

THE LAW SOCIETY OF UPPER CANADA

RESPONDENT
(RESPONDENT)

ATTORNEY GENERAL OF CANADA

INTERVENER
(RESPONDENT)

**FACTUM OF THE PROPOSED INTERVENER
THE SEVENTH-DAY ADVENTIST CHURCH IN CANADA**

December 1, 2015

MILLER THOMSON LLP
40 King St. West, Suite 5800
Toronto, ON M5H 3S1

Bradley W. Miller (47416M)
Tel: 519.931.3529
Fax: 416.595.8695

Gerald Chipeur, QC
Tel: 403.298.2434
Fax: 262.0007

Lawyers for the Proposed
Intervener, The Seventh-Day
Adventist Church in Canada

TO: BENNETT JONES LLP
3400 First Canadian Place
Toronto, ON M5X 1A4

Robert W. Staley (27115J)
Derek J. Bell (43420J)
Ranjan K. Agarwal (49488H)

Tel: 416.863.1200
Fax: 416.863.1716

Lawyers for the Applicants

AND TO: BORDEN LADNER GERVAIS LLP
4400, 40 King Street West
Toronto, ON M5H 3Y4

Guy J. Pratte
Tel: 416.350.2638
Nadia Effendi
Tel: 613.787.3562
Duncan Ault
Tel: 613.787.3524
Fax: TOR: 416.230.8842
OTT: 613.230.8842

AND TO: BREESE DAVIES
Barristers & Solicitor
171 John Street, Suite 101
Toronto, ON M5T 1X3

Breese Davies (bdavies@bdlaw.ca)

Lawyers for Criminal Lawyers Association

GOLDBLATT PARTNERS
20 Dundas Street West, Suite 1100
Toronto, ON M5G 2G8

Marlys Edwardh (medwardh@sgmlaw.com)
Frances Mahon (fmahon@sgmlaw.com)

PAUL JONATHAN SAGUIL
66 Wellington Street W., TD Tower, PO Box 1
Toronto, ON M5K 1A2

Paul Jonathan Saguil (paul.jonathan.saguil@gmail.com)

Lawyers for Out on Bay Street and OUTlaws
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1

Chris G. Paliare (chris.paliare@paliareroland.com)

MARTHA McCARTHY & CO LLP

146 Davenport Road
Toronto, ON M5R 1J2

Joanna Radbord (joanna@mccarthyco.ca)

Lawyers for The Advocates' Society

DOUCETTE BONI SANTORO FURGIUELE

110 – 20 Dundas Street West
Toronto, ON M5G 2G8

Daniel Santoro (santoro@dbsfcounsel.com)

Counsel for the Justice Centre for Constitutional Freedoms

VINCENT DAGENAIS GIBSON LLP/s.r.l.

260 Dalhousie Street, Suite 400
Ottawa, ON K1N 7E4

Albertos Polizogopoulos (albertos@vdg.ca)
Kristin Marie Barsoum Debs (kirstin@debslaw.ca)

Counsel for The Evangelical Fellowship of Canada and Christian Higher Education Canada

URSEL PHILLIPS FELLOWS HOPKINSON LLP

555 Richmond St. W., Suite 1200
Toronto, ON M5V 3B1

Susan Ursel (sursel@upfhlaw.ca)

Counsel for The Canadian Bar Association

THE JUSTICE CENTRE FOR CONSTITUTIONAL FREEDOMS

253, 7620 Elbow Drive SW
Calgary, AB T2V 1K2

John Carpay (jcarpay@jccf.ca)

STIKEMAN ELLIOTT LLP

5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Alan D'Silva (adsilva@stikeman.com)
Alexandra Urbanski (aurbanski@stikeman.com)

Solicitors for Canadian Civil Liberties Association

MAGRATH'S INTERNATIONAL LEGAL COUNSEL
393 University Avenue
Suite 2000
Toronto, ON M5G 1E6

Gavin Magrath (gavin@magraths.ca)

Solicitors for Lawyers' Right Watch Canada

ROCHON GENOVA LLP
121 Richmond St. W., Ste 900
Toronto, ON M5H 2K1

Peter R. Jervis (pjervis@rochongenova.com)

CHRISTIAN LEGAL FELLOWSHIP
Crossroads Centre
1295 North Service Road
Burlington, ON L7R 4M2

Derek B.M. Ross (execdir@christianlegalfellowship.org)

Lawyers for Christian Legal Fellowship

JOHN NORRIS
Simcoe Chambers
116 Simcoe Street, Suite 100
Toronto, ON M5G 2G8

John Norris (john.norris@simcoechambers.com)

Lawyers for Criminal Lawyers' Association

DEPARTMENT OF JUSTICE
59 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8

Christopher Rupar (Christopher.rupar@justice.gc.ca)

Lawyers for the Attorney General of Canada

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APPLICANTS
(APPELLANTS)

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RESPONDENT
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INTERVENER
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**FACTUM OF THE PROPOSED INTERVENER
SEVENTH-DAY ADVENTIST CHURCH IN CANADA**

I. INTRODUCTION

1. In this motion, The Seventh-day Adventist Church in Canada (“Church”) requests:
 - (a) that it be granted leave to intervene in this Application;
 - (b) that it be permitted to file a factum not exceeding 10 pages;
 - (c) that it be permitted to make oral argument not exceeding 10 minutes.
2. The Church respectfully submits that it should be granted leave to intervene in this appeal, as the Church:
 - (a) will be directly impacted by the outcome of this appeal;
 - (b) is a well-known advocate for the religious freedoms and liberties of all individuals and faith communities, regardless of their beliefs.

- (c) will make submissions that are useful and different from those made by the parties.

II. THE LAW

- 3. The principles that guide a Court in considering an application to intervene in litigation were canvassed by the Division Court in this matter (*Trinity Western University v. Law Society of Upper Canada*, [2014] ONSC 5541). The Church meets two of the initial criteria for intervention, as the Church:

- (a) “has a real substantial and identifiable interest in the subject matter of the proceedings,” as it operates a university similar for all material purposes with Trinity Western University (“TWU”); and,
- (b) “is a well recognized group with special expertise and a broadly identifiable membership base,” as may be confirmed in the dozen significant religious freedom cases in which it has participated as an intervener (identified below).

Reference: *Trinity Western University v Law Society of Upper Canada*, 2014 ONSC 5541 at para 5 quoting *Bedford v Canada (Attorney General)*, 2009 ONCA 669 at para 2.

- 4. In addition, the Church will make submissions that are useful and different than those of the parties. There is no doubt on this part of the test. The Church satisfied the British Columbia Supreme Court that it would provide useful and different submissions in the sister case of *Trinity Western University and Brayden Volkenant v. The Law Society of British Columbia*, Vancouver Registry, No. S-149837.
- 5. The affidavit of Mark Johnson outlines arguments that meet this test. Furthermore, the Court has been given an undertaking that the Church will file a factum consistent with this part of the test.

III THE SEVENTH-DAY ADVENTIST CHURCH IN CANADA: ITS HISTORY AND EXPERTISE

6. The Seventh-day Adventist Church in Canada is a body corporate, federally incorporated without share capital, pursuant to a Special Act of Parliament, since 1920.
7. Currently, there are over 67,000 members throughout Canada worshipping in some 375 congregations. The Church operates 45 educational institutions throughout Canada, including a university. These schools exist to provide students with a Christian education in and through which they express and live out their faith as guaranteed by the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c. 11.
8. The Church has a well-established history of involvement in matters of public policy and law, especially with respect to matters that involve the Charter of Rights and Freedoms and the fundamental freedom of conscience and religion.
9. The Church has published *Liberty, A Magazine of Religious Freedom*, for over a century. *Liberty* promotes a broad understanding of religious freedom.

IV. PREVIOUS INTERVENTIONS

10. In order to assist the courts of Canada in ensuring that all Canadians enjoy a full measure of religious freedom, the Church has intervened in a number of matters involving religious freedom, including:
 - (i) *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 (constitutional challenge to federal Lord's Day Act);

- (ii) *The Queen v. Edwards Books and art Ltd.*, [1986] 2 S.C.R. 713 (constitutional challenge to Ontario's Sunday closing laws);
- (iii) *Reference re Bill 30, An Act to Amend the Education Act (Ont.)*, [1987] 1 S.C.R. 1148 (constitutional challenge to proposed legislation providing full funding to Roman Catholic separate high schools);
- (iv) *Alberta (Human Rights Commission) v. Central Alberta Dairy Pool*, [1990] S.C.R. 489 (duty to accommodate observation of religious holidays);
- (v) *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970 (duty to accommodate observation of the Sabbath)
- (vi) *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772 (religious freedom of students and schools in British Columbia) ("*TWU v BCCT*");
- (vii) *Congregation des temoins de Jehovah de St-Jerome-Lafontaine v. Lafontaine (Village)*, [2004] 2 S.C.R. 650 (religious freedom to build churches);
- (viii) *Syndicat Northcrest v. Anselem*, 2004 SCC 47, 2 S.C.R. 551 (accommodation of religious practices);
- (ix) *Reference re Same-Sex Marriage*, 2004 SCC 79, 3 SCR 698 (constitutional limits on Parliament's power to define marriage);
- (x) *Marriage Commissioners Appointed under the Marriage Act (Re)*, 2011 SKCA 3 (marriage commissioners' right to exercise freedom of conscience);
- (xi) *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12 (religious freedom of private religious schools in Quebec upheld);

(xii) *Trinity Western University and Brayden Volkenant v. The Law Society of British Columbia*, Vancouver Registry. No. S-149837.

11. Each of these cases, like the present one, address important questions regarding religious liberty. In various appellate courts and the Supreme Court of Canada, the Church has always adopted a position supporting an expansive interpretation of the guarantees of freedom of conscience and religion for all Canadians, regardless of their beliefs.

V. INTEREST IN THE ISSUES

12. The Church has an interest in the social, legal and constitutional issues raised in this appeal. In addition, the Church will be uniquely affected by the Decision. This is because the Church operates a faith-based university in Alberta. The issues in this appeal are public issues that go beyond the effect on TWU and the students who wish to study there. Any judgment in this case will have a profound effect on others, including teachers and students in Church institutions.
13. The Church has a longstanding interest in how freedom of religion guarantees impact faith affiliated universities, an interest which predates its intervention in *TWU v. BCCT*. The accreditation of the proposed law faculty at TWU and the freedom of religion of university students has been a matter of great concern to the Church.

VI. ANTICIPATED ARGUMENTS

14. The anticipated arguments of the Church before the Court will include the following:
- (a) The Law Society of Upper Canada ("Society") decision ("Decision") with respect to (TWU) and its graduates is outside the Society's authority. The Decision is, or appears to be, based upon the Society's opposition to the fundamental religious

beliefs of TWU. The Society lacks the authority to oppose the faith of TWU or its graduates

- (b) The Decision is capricious. There is no law of which TWU is in violation, nor any evidence of a deficiency in the rigour of their proposed curriculum. There is a Supreme Court of Canada precedent dealing with the same issue (*TWU v. BCCT*), yet the Society has ignored this precedent and undermined the Rule of Law.
- (c) International law also has an impact on the Decision. The Convention on the Rights of the Child and the Universal Declaration of Human Rights may be utilized by this Court in its judicial review of the Decision. Interpretations of the law that reflect the values of freedom of religion and protect the religious liberty of the TWU teachers and students should be preferred by this Court.
- (d) The Decision undermines the very principles of individual freedom the Charter was designed to protect. If the graduates of faith-based schools cannot secure licenses to practice their chosen profession, enrollment by those desiring to practice law or any other publicly regulated profession will dry up. The schools and universities operated by Church will be less attractive to potential students;
- (e) Professional regulating agencies such as the Society must remain apolitical, religiously neutral and unbiased. It is impossible for a regulator to have a commitment to diversity while simultaneously determining which ideological outlooks are acceptable for lawyers.

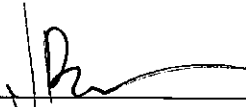
VII. ORDER REQUESTED

15. The Church seeks leave to intervene on the following terms:

- (a) That it be permitted to file a factum of no more than 10 pages;
- (b) That it be permitted to make an oral argument of no more than 10 minutes;
- (c) That it not be awarded any costs or have any costs awarded against it;
- (d) That there be no costs of this motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 1st day of December, 2015

December 1, 2015



Solicitors for the Seventh-day Adventist
Church in Canada
Miller Thomson LLP
Gerald Chipeur, Q.C.
Scotia Plaza
40 King Street West, Suite 5800
Toronto, ON M5H 3S1
gchipeur@millerthomson.com

TRINITY WESTERN UNIVERSITY ET
AL.
Applicants

THE LAW SOCIETY OF UPPER
CANADA
Respondent

Court File No.: C6116

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Proceeding commenced at TORONTO

**FACTUM OF THE PROPOSED INTERVENER,
THE SEVENTH-DAY ADVENTIST
CHURCH IN CANADA
(RETURNABLE DECEMBER 11, 2015)**

MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

Bradley W. Miller LSUC#: 47416M
Tel: 519.931.3529
Fax: 416.595.8695
Gerald Chipeur, QC
Tel: 403.298.2434
Fax: 416.595.8695

Lawyers for the Proposed Intervener, The
Seventh-Day Adventist Church in Canada