

IN THE SUPREME COURT OF CANADA
(ON APPEAL FOR THE COURT OF APPEAL OF ONTARIO)

BETWEEN:

TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT

Appellants

- and -

LAW SOCIETY OF UPPER CANADA

Respondent

- and -

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Interveners

[Style of Cause continued on inside cover]

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(ON APPEAL FROM THE COURT OF APPEAL OF BRITISH COLUMBIA)

BETWEEN:

LAW SOCIETY OF BRITISH COLUMBIA

Appellant

- and -

TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT

Respondents

- and -

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PARTS I AND II – OVERVIEW AND POSITION

1. While these cases stand to be decided on a *Doré* analysis, “questions about the identity of the person(s) whose section 2(a) rights have been interfered with lurk just below the surface of that inquiry.”¹
2. The wording of the *Charter* does not require s. 2(a) rights be extended to organizations. It provides that right to “everyone”, not every legal person. Furthermore, it is trite that an organization cannot itself have a religion. As such, any decision to extend to s. 2(a) rights to organizations is necessarily a policy decision.
3. The rationale for extending s. 2(a) rights to organizations is the fact that, for many, religion has an important communal aspect. That, however, cannot justify the extension of religious freedoms to organizations. To do so does not enhance religious protection for all but rather, endorses religious oligarchy for individuals controlling organizations that obtain the benefit of s. 2(a). Further, refusing to extend the protection does not make state action toward organizations a *Charter*-free zone. Individuals may always assert their s. 2(a) and s. 2(d) rights.
4. The British Columbia Humanist Association (“BCHA”) is concerned that the extension of s. 2(a) rights to organizations will have significant and deleterious effects on Canadians and Canadian society. Such will result in state-tolerated religious preferences for access to such necessities as education, medical care and employment.
5. Should s. 2(a) protection be extended to organizations, the BCHA, using human rights legislation as its guide, proposes a narrower test than that articulated by the minority of this Court in *Loyola*. The proposed test balances the concerns of protecting the communal aspect of religion with those of too liberally granting organizations s. 2(a) rights and the impact that will have on individual members of organizations, the public and Canadian society at large.

¹ Chan, Kathryn, “Identifying the Institutional Religious Freedom Claimant” (June 29, 2017) (2017) 95 Cdn Bar Review (Forthcoming) at p. 7 [Chan, “Identifying”].

PART III – ARGUMENT

A. An Organization Cannot Have a Religion or a s. 2(a) Right

6. The religious freedoms afforded by s. 2(a) of the *Charter* are inherently individual in nature and focused on a person’s subjective beliefs and perceived personal relationship with the divine.
7. The purpose of freedom of religion, as articulated by this Court, is “to ensure that society does not interfere with profoundly personal beliefs”² and that “every individual [is] free to hold and to manifest whatever beliefs and opinions his or her conscience dictates”³.
8. Consequently, the concept of freedom of religion is clearly both personal and subjective in nature, as well as “integrally linked with an individual’s self-definition and fulfilment and is a function of personal autonomy and choice, elements which undergird the right”⁴.
9. This Court has also noted that “freedom of religion... has both individual and collective aspects”⁵ and this Court has recognized “that individuals may sometimes require a legal entity in order to give effect to the constitutionally protected communal aspects of their religious beliefs and practice”⁶.
10. Nevertheless, the communal aspect of religion cannot result in the ascription of religion to an organization that is incapable of having a religion or religious beliefs.
11. As noted by this Court, a corporation cannot possess a belief.⁷ It cannot feel. It cannot engage in abstract thought. It cannot choose. It merely does, or does not. An organization is a legal construct. Societies and corporations exist because legislation authorizes their creation.

² *R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713 at ¶97 per Dickson J. [*Edwards Books*]

³ *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 at ¶123 per Dickson J.

⁴ *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551 at ¶42 per Iacobucci J.

⁵ *Edwards Books*, *supra* at ¶140 per Dickson J.

⁶ *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12 at ¶33 per Abella J. [*Loyola*]

⁷ *Edwards Books*, *supra* at ¶153 per Dickson J.

