File No. 37209

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

B E T W E E N :

TRINITY WESTERN UNIVERSITY and BRAYDEN VOLKENANT

Appellants

- and -

LAW SOCIETY OF UPPER CANADA

Respondent

- and -

ATTORNEY GENERAL OF ONTARIO, CANADIAN COUNCIL OF CHRISTIAN CHARITIES, ASSOCIATION FOR REFORMED POLITICAL ACTION (ARPA) CANADA, CANADIAN CONFERENCE OF CATHOLIC BISHOPS, CANADIAN ASSOCIATION OF UNIVERSITY TEACHERS, START PROUD, OUTLAWS, CANADIAN CIVIL LIBERTIES ASSOCIATION, THE ADVOCATES' SOCIETY, UNITED CHURCH OF CANADA, CHRISTIAN LEGAL FELLOWSHIP, LAW STUDENTS' SOCIETY OF ONTARIO, CRIMINAL LAWYERS' ASSOCIATION (ONTARIO), CANADIAN BAR ASSOCIATION, SEVENTH-DAY ADVENTIST CHURCH IN CANADA, EVANGELICAL FELLOWSHIP OF CANADA, CHRISTIAN HIGHER EDUCATION CANADA, LESBIANS GAYS BISEXUALS AND TRANS PEOPLE OF THE UNIVERSITY OF TORONTO, INTERNATIONAL COALITION OF PROFESSORS OF LAW, BRITISH COLUMBIA HUMANIST ASSOCATION, EGALE CANADA HUMAN RIGHTS TRUST, FAITH, FEALTY & CREED SOCIETY, ROMAN CATHOLIC ARCHDIOCESE OF VANCOUVER, CATHOLIC CIVIL RIGHTS LEAGUE, FAITH AND FREEDOM ALLIANCE, CANADIAN SECULAR ALLIANCE, WORLD SIKH ORGANIZATION OF CANADA, NATIONAL COALITION OF CATHOLIC SCHOOL TRUSTEES, LAWYERS' RIGHTS WATCH CANADA

Interveners

FACTUM OF THE INTERVENER LESBIANS GAYS BISEXUALS AND TRANS PEOPLE OF THE UNIVERSITY OF TORONTO (LGBTOUT)

(Pursuant to Rules 37 and 42 of *The Rules of the Supreme Court of Canada*)

Angela Chaisson
ANGELA CHAISSON LAW
197 Spadina Avenue, Suite 402
Toronto, ON M5T 2C8
Tel.: 647 567 3536
Fax: 647 977 9074
Email: law@chaisson.ca

Yael Wexler
FASKEN MARTINEAU DUMOULIN LLP
55 Metcalfe Street, Suite 1300
Ottawa, ON K1P 6L5
Tel: 613 696 6860
Fax: 613 230 6423
Email: ywexler@fasken.com

Marcus McCann
SYMES STREET & MILLARD LLP
366 Adelaide Street West, Suite 102
Toronto ON M5V 1R9
Tel: 416-920-2504
Fax: 416-920-3033
Email: mccann@ssmlaw.ca

LAWYERS FOR INTERVENER, LGBTOUT

OTTAWA AGENT FOR COUNSEL OF INTERVENER, LGBTOUT

ORIGINAL TO:

THE REGISTRAR
Supreme Court of Canada
301 Wellington Street
Ottawa, ON
K1A OJ1
Registry-Greffe@SCC-CSC.CA

COPIES TO:

COUNSEL FOR THE APPELLANTS, TRINITY WESTERN UNIVERSITY AND VOLKENANT, BRAYDEN

BENNETT JONES LLP
Suite 3400, PO Box 130
One First Canadian Place
Toronto, ON M5X 1A4

Robert W. Staley
Ranjan Agarwal
Jessica M. Starck
Tel: 416-777-4857
Fax: 416-863-1716
Email: staleyr@bennettjones.com
agarwalr@ bennettjones.com

AGENT FOR THE APPELLANTS, TRINITY WESTERN UNIVERSITY AND VOLKENANT, BRAYDEN

BENNETT JONES LLP
World Exchange Plaza
1900-45 O'Connor Street
Ottawa, ON K1P 1A4

Mark Jewett Q.C.

Tel: 613-683-2328
Fax: 613-683-2323
Email: jewettm@bennettjones.com

COUNSEL FOR THE RESPONDENT, LAW SOCIETY OF UPPER CANADA

BORDEN LADNER GERVAIS LLP
40 King Street West, 44th Floor
Toronto, ON M5H 3Y4

Guy Pratte
Tel: 416-367-6000
Fax: 416-367-6749
Email: gpratte@blg.com

AGENT FOR THE RESPONDENT, LAW SOCIETY OF UPPER CANADA

BORDEN LADNER GERVAIS LLP
100 Queen Street, Suite 1300
Ottawa, ON K1P 1J9

Nadia Effendi

Tel: 613-237-5160
Fax: 613-230-8842
Email: neffendi@blg.com

COUNSEL FOR THE INTERVENER, ATTORNEY GENERAL OF ONTARIO

AGENT FOR THE INTERVENER, ATTORNEY GENERAL OF ONTARIO

ATTORNEY GENERAL OF ONTARIO
720 Bay Street, 4th Floor
Toronto, ON M7A 2S9

S. Zachary Green
Josh Hunter
Tel: 416-326-8517
Fax: 416-326-4015
Email: zachary.green@ontario.ca

BURKE-ROBERTSON
441 MacLaren Street, Suite 200
Ottawa, ON K2P 2H3

Robert E. Houston, Q.C.

Tel: 613-236-9665
Fax: 613-235-4430
Email: rhouston@burkerobertson.com

COUNSEL FOR THE INTERVENER, CANADIAN CIVIL LIBERTIES ASSOCIATION

STIKEMAN ELLIOTT LLP
Barristers and Solicitors
5300 Commerce Court West,
199 Bay Street
Toronto, ON M5L 1B9

Alan L.W. D'Silva
Alexandra Urbanski
Tel: 416-869-5204
Fax: 416-947-0866
Email: adsilva@stikeman.com

AGENTS FOR THE INTERVENER, CANADIAN CIVIL LIBERTIES ASSOCIATION

STIKEMAN ELLIOTT LLP
Barristers and Solicitors
50 O'Connor Street
Suite 1600
Ottawa, ON K1P 6L2

Nicholas Peter McHaffie
Tel: 613-566-0546
Fax: 613- 230-8877
Email: nmchaffie@stikeman.com

COUNSEL FOR THE INTERVENER, CANADIAN COUNCIL OF CHRISTIAN CHARITIES

CANADIAN COUNCIL OF CHRISTIAN CHARITIES
1- 43 Howard Avenue
Elmira, ON N3B 2C9

Barry W. Bussey
Philip A.S. Milley
Tel: 519- 669-5137
Fax: 519- 669-3291
Email: barry.bussey@cccc.org

AGENT FOR THE INTERVENER, CANADIAN COUNCIL OF CHRISTIAN CHARITIES

SUPREME ADVOCACY LLP
100-340 Gilmour Street
Ottawa, ON
K2P 0R3

Eugene Meehan, Q.C.
Tel: 613-695-8855 Ext: 101
Fax: 613-695-8580
Email: emeehan@supremeadvocacy.ca

COUNSEL FOR THE INTERVENER, ASSOCIATION FOR REFORMED POLITICAL ACTION (ARPA) CANADA

AGENT FOR THE INTERVENER, ASSOCIATION FOR REFORMED POLITICAL ACTION (ARPA) CANADA

ASSOCIATION FOR REFORMED POLITICAL ACTION (ARPA) CANADA
130 Albert Street, Suite 1705
Ottawa, ON K1P 5G4

Andre Schutten
Tel: 613-297-5172
Fax: 613-249-3238
Email: Andre@ARPACanada.ca

SUPREME ADVOCACY LLP
100-340 Gilmour Street
Ottawa, ON
K2P 0R3

Marie-France Major
Tel: 613-695-8855 Ext: 101
Fax: 613- 695-8580
Email: mfmajor@supremeadvocacy.ca

COUNSEL FOR THE INTERVENER, CANADIAN CONFERENCE OF CATHOLIC BISHOPS

BARNES, SAMMON LLP
200 Elgin Street, Suite 400
Ottawa, ON K2P 1L5

W. J. Sammon
Tel: (613) 594-8000
Fax: (613) 235-7578
Email: wjs@barnessammon.ca

COUNSEL FOR THE INTERVENER, CANADIAN ASSOCIATION OF UNIVERSITY TEACHERS

CANADIAN ASSOCIATION OF UNIVERSITY TEACHERS
2705 Queensview Drive
Ottawa, ON K2B 8K2

Peter Barnacle
Immanuel Lanzaderas
Tel: (613) 820-2270 Ext: 192
Fax: (613) 820-7244
Email: barnacle@caut.ca

AGENT FOR THE INTERVENER, CANADIAN ASSOCIATION OF UNIVERSITY TEACHERS

GOLDBLATT PARTNERS LLP
500-30 Metcalfe Street
Ottawa, ON
K1P 5L4

Colleen Bauman
Tel: (613) 482-2463
Fax: (613) 235-3041
Email: cbauman@goldblattpartners.com

COUNSEL FOR THE INTERVENER, START PROUD

GOLDBLATT PARTNERS LLP
Box 180
1039-20 Dundas Street West
Toronto, ON M5G 2G8

AGENT FOR THE INTERVENER, START PROUD

GOLDBLATT PARTNERS LLP
500-30 Metcalfe Street
Ottawa, ON
K1P 5L4

Marlys A. Edwardh
Vanessa Payne
Tel: (416) 979-4380
Fax: (416) 979-4430
Email: medwardh@goldblattpartners.com

COUNSEL FOR THE INTERVENER, OUTLAWS

GOLDBLATT PARTNERS LLP
Box 180
1039-20 Dundas Street West
Toronto, ON M5G 2G8

Marlys A. Edwardh
Vanessa Payne
Tel: (416) 979-4380
Fax: (416) 979-4430
Email: medwardh@goldblattpartners.com

COUNSEL FOR THE INTERVENER, THE ADVOCATES' SOCIETY

PALIARE, ROLAND, ROSENBERG, ROTHSTEIN, LLP
155 Wellington Street West
35th Floor
Toronto, ON M5V 3H1

Chris G. Paliare
Joanna Radbord
Monique Pongracic-Speier
Tel: (416) 646-4318
Fax: (416) 646-4301
Email: chris.paliare@paliareroland.com

COUNSEL FOR THE INTERVENER, UNITED CHURCH OF CANADA

DEWART GLEASON LLP
102-366 Adelaide Street West
Toronto, ON M5V 1R9

Sean Dewart
Tim Gleason
Tel: (416) 971-8000
Fax: (416) 971-8001

Colleen Bauman
Tel: (613) 482-2463
Fax: (613) 235-3041
Email: cbauman@goldblattpartners.com

AGENT FOR THE INTERVENER, OUTLAWS

GOLDBLATT PARTNERS LLP
500-30 Metcalfe Street
Ottawa, ON
K1P 5L4

Colleen Bauman
Tel: (613) 482-2463
Fax: (613) 235-3041
Email: cbauman@goldblattpartners.com

AGENT FOR THE INTERVENER, THE ADVOCATES' SOCIETY

GOWLING WLG (CANADA) LLP
160 Elgin Street, Suite 2600
Ottawa, ON
K1P 1C3

Jeffrey W. Beedell
Tel: (613) 786-0171
Fax: (613) 788-3587
Email: jeff.beedell@gowlingwlg.com

AGENT FOR THE INTERVENER, UNITED CHURCH OF CANADA

SUPREME LAW GROUP
900-275 Slater Street
Ottawa, ON K1P 5H9

Moira Dillon
Tel: 613-691-1224
Fax: 613-691-1338
Email: mdillon@supremelawgroup.ca

Email: sdewart@dgllp.ca

COUNSEL FOR THE INTERVENER, CHRISTIAN LEGAL FELLOWSHIP

CHRISTIAN LEGAL FELLOWSHIP
285 King Street, Suite 202
London, ON N6B 3M6

Derek B.M. Ross
Deina Warren
Tel: (519) 601-4099
Fax: (519) 601-4098
Email: execdir@christianlegalfellowship.org

AGENT FOR THE INTERVENER, CHRISTIAN LEGAL FELLOWSHIP

SUPREME ADVOCACY LLP
100-340 Gilmour Street
Ottawa, ON K2P 0R3

Eugene Meehan, Q.C.
Tel: (613) 695-8855 Ext: 101
Fax: (613) 695-8580
Email: emeehan@supremeadvocacy.ca

COUNSEL FOR THE INTERVENER, LAW STUDENTS' SOCIETY OF ONTARIO

NORTON ROSE FULBRIGHT CANADA LLP
200 Bay Street, Suite 3800
Royal Bank Plaza, South Tower
Toronto, ON M5J 2Z4

Rahool P. Agarwal
Kristine Spence
Tel: (416) 216-3943
Fax: (416) 216-3930
Email: rahool.agarwal@nortonrose.com

AGENT FOR THE INTERVENER, LAW STUDENTS' SOCIETY OF ONTARIO

NORTON ROSE FULBRIGHT CANADA LLP
45 O'Connor Street, Suite 1500
Ottawa, ON
K1P 1A4

Matthew J. Halpin
Tel: (613) 780-8654
Fax: (613) 230-5459
Email:
matthew.halpin@nortonrosefulbright.com

COUNSEL FOR THE INTERVENER, CRIMINAL LAWYERS' ASSOCIATION (ONTARIO)

CRIMINAL LAWYERS' ASSOCIATION (ONTARIO)
100 – 116 Simcoe Street
Toronto, ON M5H 4E2

John Norris
Breese Davies
Tel: (416) 596-2960
Fax: (416) 596-2598
Email: john.norris@simcoechambers.com

AGENT FOR THE INTERVENER, CRIMINAL LAWYERS' ASSOCIATION (ONTARIO)

GOWLING WLG (CANADA) LLP
160 Elgin Street, Suite 2600
P.O. Box 466, Stn. A
Ottawa, ON K1P 1C3

Matthew Estabrooks
Tel: (613) 786-0211
Fax: (613) 788-3573
Email: matthew.estabrooks@gowlingwlg.com

COUNSEL FOR THE INTERVENER,

AGENT FOR THE INTERVENER,

CANADIAN BAR ASSOCIATION

URSEL PHILLIPS FELLOWS HOPKINSON LLP
1200 – 555 Richmond Street West
Toronto, ON M5V 3B1

Susan Ursel
Angela Westmacott, Q.C.
Tel: (416) 969-3515
Fax: (416) 968-0325
Email: sursel@upfhlaw.com

COUNSEL FOR THE INTERVENER, SEVENTH-DAY ADVENTIST CHURCH IN CANADA

MILLER THOMSON LLP
3000, 700- 9th Avenue SW
Calgary, AB T2P 3V4

Gerald D. Chipeur, Q.C.
Jonathan Martin
Grace MacKintosh
Tel: (403) 298-2425
Fax: (403) 262-0007
Email: gchipeur@millerthomson.com

COUNSEL FOR THE INTERVENER, EVANGELICAL FELLOWSHIP OF CANADA

VINCENT DAGENAIS GIBSON LLP
260 Dalhousie Street, Suite 400
Ottawa, ON K1N 7E4

Albertos Polizogopoulos
D. Geoffrey Cowper, Q.C.
Kristin Debs
Geoffrey Trotter
Tel: (613) 241-2701
Fax: (613) 241-2599
Email: albertos@vdg.com

COUNSEL FOR THE INTERVENER, CHRISTIAN HIGHER EDUCATION CANADA

CANADIAN BAR ASSOCIATION

GOWLING WLG (CANADA) LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

Jeffrey W. Beedell
Tel: (613) 786-0171
Fax: (613) 788-3587
Email: jeff.beedell@gowlingwlg.com

AGENT FOR THE INTERVENER, SEVENTH-DAY ADVENTIST CHURCH IN CANADA

SUPREME ADVOCACY LLP
100-340 Gilmour Street
Ottawa, ON K2P 0R3

Eugene Meehan, Q.C.
Tel: (613) 695-8855 Ext: 101
Fax: (613) 695-8580
Email: emeehan@supremeadvocacy.ca

VINCENT DAGENAIS GIBSON LLP
260 Dalhousie Street, Suite 400
Ottawa, ON K1N 7E4

Albertos Polizogopoulos
D. Geoffrey Cowper, Q.C.
Kristin Debs
Geoffrey Trotter
Tel: (613) 241-2701
Fax: (613) 241-2599
Email: albertos@vdg.com

COUNSEL FOR THE INTERVENER, INTERNATIONAL COALITION OF PROFESSORS OF LAW

SUPREME ADVOCACY LLP
100-340 Gilmour Street
Ottawa, ON K2P 0R3

Eugene Meehan, Q.C.
Tel: (613) 695-8855 Ext: 101
Fax: (613) 695-8580
Email: emeehan@supremeadvocacy.ca

AGENT FOR THE INTERVENER, INTERNATIONAL COALITION OF PROFESSORS OF LAW

SUPREME ADVOCACY LLP
100-340 Gilmour Street
Ottawa, ON K2P 0R3

Marie-France Major
Tel: (613) 695-8855 Ext: 102
Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

COUNSEL FOR THE INTERVENER, BRITISH COLOMBIA HUMANIST ASSOCIATION

HAKEMI & RIDGEDALE LLP
1500-888 Dunsmuir Street
Vancouver, BC
V6C 3K4

Wesley J. McMillan
Telephone: (604) 259-2269
FAX: (604) 648-9170
E-mail: wmcmillan@hakemiridgedale.com

AGENT FOR THE INTERVENER, BRITISH COLOMBIA HUMANIST ASSOCIATION

GOWLING WLG (CANADA) LLP
160 Elgin Street
Suite 2600
Ottawa, ONK1P 1C3

Guy Régimbald
Telephone: (613) 786-0197
FAX: (613) 563-9869
E-mail: guy.regimbald@gowlingwlg.com

COUNSEL FOR THE INTERVENER, EGALE HUMAN RIGHTS TRUST

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

AGENT FOR THE INTERVENER, EGALE HUMAN RIGHTS TRUST

GOLDBLATT PARTNERS LLP
500-30 Metcalfe Street
Ottawa, ON
K1P 5L4

Steven Barrett
Adriel Weaver
Tel: (416) 979-6422
Fax: (416) 591-7333
Email: sbarrett@goldblattpartners.com
Email: aweaver@goldblattpartners.com

Colleen Bauman
Tel: (613) 482-2463
Fax: (613) 235-3041
Email: cbauman@goldblattpartners.com

COUNSEL FOR THE INTERVENER, FAITH, FEALTY & CREED SOCIETY

BENEFIC LAW CORPORATION
1250-1500 West Georgia Street
P.O. Box 62
Vancouver, BC V6G 2Z6

Blake Bromley
Tel: (604) 683-7006
Fax: (604) 683-5676
Email: blake@beneficgroup.com

AGENT FOR THE INTERVENER, FAITH, FEALTY & CREED SOCIETY

331 Somerset Street West
Ottawa, ON K2P 0J8

Michael J. Sobkin
Tel: (613) 282-1712
Fax: (613) 288-2896
Email: msobkin@sympatico.ca

COUNSEL FOR THE INTERVENER, ROMAN CATHOLIC ARCHDIOCESE OF VANCOUVER

FOY ALLISON LAW GROUP
210-2438 Marine Drive
West Vancouver, BC V7V 1L2

Gwendoline Allison
Tel: (604) 922-9282
Fax: (604) 922-9283
Email: gwendoline.allison@foyallison.com

AGENT FOR THE INTERVENER, ROMAN CATHOLIC ARCHDIOCESE OF VANCOUVER

VINCENT DAGENAIS GIBSON LLP
260 Dalhousie Street, Suite 400
Ottawa, ON K1N 7E4

Albertos Polizogopoulos
Tel: (613) 241-2701
Fax: (613) 241-2599
Email: albertos@vdg.com

COUNSEL FOR THE INTERVENER, CATHOLIC CIVIL RIGHTS LEAGUE

FOY ALLISON LAW GROUP
210-2438 Marine Drive
West Vancouver, BC V7V 1L2

Gwendoline Allison
Tel: (604) 922-9282
Fax: (604) 922-9283
Email: gwendoline.allison@foyallison.com

AGENT FOR THE INTERVENER, CATHOLIC CIVIL RIGHTS LEAGUE

VINCENT DAGENAIS GIBSON LLP
260 Dalhousie Street, Suite 400
Ottawa, ON K1N 7E4

Albertos Polizogopoulos
Tel: (613) 241-2701
Fax: (613) 241-2599
Email: albertos@vdg.com

COUNSEL FOR THE INTERVENER, FAITH AND FREEDOM ALLIANCE

FOY ALLISON LAW GROUP
210-2438 Marine Drive
West Vancouver, BC V7V 1L2

Gwendoline Allison
Tel: (604) 922-9282
Fax: (604) 922-9283
Email: gwendoline.allison@foyallison.com

AGENT FOR THE INTERVENER, FAITH AND FREEDOM ALLIANCE

VINCENT DAGENAIS GIBSON LLP
260 Dalhousie Street, Suite 400
Ottawa, ON K1N 7E4

Albertos Polizogopoulos
Tel: (613) 241-2701
Fax: (613) 241-2599
Email: albertos@vdg.com

COUNSEL FOR THE INTERVENER, CANADIAN SECULAR ALLIANCE

JFK LAW CORPORATION
340-1122 Mainland Street
Vancouver, BC V6B 5L1

Tim Dickson
Tel: (604) 687-0549
Fax: (604) 687-2696
Email: tdickson@jfklaw.ca

AGENT FOR THE INTERVENER, CANADIAN SECULAR ALLIANCE

GOWLING WLG (CANADA) LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

Guy Regimbald
Tel: (613) 786-0197
Fax: (613) 563-9869
Email: guy.regimbald@gowlingwlg.com

COUNSEL FOR THE INTERVENER, WORLD SIKH ORGANIZATION OF CANADA

NANDA & COMPANY
3400 Manulife Place
10180-101 Street N.W.
Edmonton, AB T5J 4K1

Avnish Nanda
Balpreet Singh Boparai
Tel: (780) 801-5324
Fax: (587) 318-1391
Email: avnish@nandalaw.ca

AGENT FOR THE INTERVENER, WORLD SIKH ORGANIZATION OF CANADA

SUPREME ADVOCACY LLP
100-340 Gilmour Street
Ottawa, ON K2P 0R3

Marie-France Major
Tel: (613) 695-8855 Ext: 102
Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

COUNSEL FOR THE INTERVENER, NATIONAL COALITION OF CATHOLIC SCHOOL TRUSTEES

SUPREME ADVOCACY LLP
100-340 Gilmour Street
Ottawa, ON K2P 0R3

AGENT FOR THE INTERVENER, NATIONAL COALITION OF CATHOLIC SCHOOL TRUSTEES

SUPREME ADVOCACY LLP
100-340 Gilmour Street
Ottawa, ON K2P 0R3

Eugene Meehan, Q.C.
Daniel C. Santoro
Tel: (613) 695-8855 Ext: 101
Fax: (613) 695-8580
Email: emeehan@supremeadvocacy.ca

Thomas Slade
Tel: (613) 695-8855
Fax: (613) 695-8580
Email: tslade@supremeadvocacy.ca

COUNSEL FOR THE INTERVENER, LAWYERS' RIGHTS WATCH CANADA

GREY, CASGRAIN
1155 Rene-Levesque Ouest, Suite 1715
Montreal, QC H3B 2K8

Julius H. Grey
Tel: (514) 288-6180 Ext: 229
Fax: (514) 288-8908
Email: jhgrey@greycasgrain.net

AGENT FOR THE INTERVENER, LAWYER'S RIGHTS WATCH CANADA

GOWLING WLG (CANADA) LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

Guy Regimbald
Tel: (613) 786-0197
Fax: (613) 563-9869
Email: guy.regimbald@gowlingwlg.com

TABLE OF CONTENTS

PART I – OVERVIEW OF POSITION AND STATEMENT OF FACTS

1. Admission to a proposed law school at Trinity Western University (**TWU**) is available only to those who sign the school's Community Covenant (**Admissions Policy**). Under the Admissions Policy, students must abstain from same-sex intimacy, married or not. As a result, lesbian, gay, bisexual, transgender and queer (**LGBTQ**) people are excluded from these law school seats. TWU nonetheless wants to compel the Law Society of Upper Canada (**LSUC**) to accredit its proposed law school.

2. Equality rights matter. They are important because the harms that flow from discrimination are real and have severe consequences in the lives of LGBTQ people. In this case, those consequences will be felt most acutely by LGBTQ students who want to go to law school. LGBTQ equality was central to LSUC's decision. LSUC acted to preserve equal access to LSUC-accredited law schools, for all people. Equality remains central in this Honourable Court's review. It is especially relevant when weighing the deleterious effects that would result from accrediting a law school that discriminates against LGBTQ people.

3. Lesbians, Gays, Bisexuals, and Trans People of the University of Toronto (**LGBTOUT**) is Canada's oldest LGBTQ student organization. LGBTOUT's members are among the annual applicants to Canadian law schools. It is these students whose equality interests will suffer.

4. LGBTOUT was granted leave to intervene to make submissions on the harms of discrimination to LGBTQ university students raised in this appeal, and the place of the harm in the legal analysis.

5. LGBTOUT accepts the facts as set out in the Respondent's factum.

PART II – POSITION ON THE ISSUES

6. This appeal asks if TWU can compel LSUC to sanction its discriminatory Admissions Policy through accreditation. LGBTOUT submits that the answer is "No".

PART III – STATEMENT OF ARGUMENT

7. All statutory decision makers must act consistently with the Constitution and the values underlying the grant of discretion, including the *Charter*.[1] Where an administrative decision implicates the *Charter,* a decision maker must balance the *Charter* values at stake – ***all*** the *Charter* values at stake – against their statutory objectives.

8. As this Court explained in *Doré* and *Loyola*,[2] reviewing Courts determine whether an administrative decision reflects a proportionate balance – one "that gives effect, as fully as possible to the *Charter* protections at stake given the particular statutory mandate."[3] This requires a Court to proceed in two stages. It must first determine whether a decision engages the *Charter*.[4] If the *Charter* is engaged then at the second stage, the Court must engage in a "proportionality exercise."

9. However, this case involves two competing sets of *Charter* protections – TWU's religious freedom and LGBTQ equality rights. LGBTOUT submits that in such cases, proportionate balancing necessarily engages both sets of *Charter* interests throughout the analysis, and requires the reviewing Court to engage in an express balancing of salutary and deleterious effects in the spirit of the final stage of *Oakes*[5] and *N.S.*[6] The harms to LGBTQ people are especially relevant when weighing the deleterious effects in this final balancing.

STAGE ONE: THE CHARTER IS ENGAGED

10. In *Loyola*, this Court found that "[t]he preliminary issue is whether the decision engages the *Charter* by limiting its protections."[7] LSUC's decision would have triggered this analysis no

---

[1] *Doré v Barreau du Québec*, [2012] 1 SCR 395 at para 24 [*Doré*]; *Vancouver Sun (Re)*, [2004] 2 SCR 332 at para 31; *Slaight Communications Inc v Davidson*, [1989] 1 SCR 1038 at 1081; *Rodgers (Re)*, [2006] 1 SCR 554 at para 20

[2] *Loyola High School v Quebec (Attorney General)*, [2015] 1 SCR 613 [*Loyola*]

[3] *Ibid* at 39

[4] *Ibid* at 37

[5] *R v Oakes*, [1986] 1 SCR 103 at paras 70-71 [*Oakes*]

[6] *R v N.S.*, [2012] 3 SCR 726 at paras 34-35 [*N.S.*]

[7] *Loyola* at para 39

matter what it decided: accreditation would have engaged LGBTQ equality interests, and LSUC's refusal of accreditation engages TWU's religious freedom interests. To the extent that this stage merely alerts the reviewing Court that it must assess reasonableness using the *Doré* analysis, nothing turns on this. But to the extent that stage one frames the *Charter* interests that must be proportionately balanced for a decision to be upheld on judicial review, both sets of interests must be expressly identified.

STAGE TWO: DID LSUC STRIKE A PROPER BALANCE?

11. Under *Doré*, the Court must examine the statutory objective, how best to protect the *Charter* protections at stake, and assess whether a proper balancing was reached. In an ordinary case, where only one set of *Charter* protections is engaged, this proportionality analysis works two "justificatory muscles" – minimal impairment and balancing – which together illuminate whether the decision impaired the *Charter* protections as little as possible in light of the relevant statutory objectives.[8] In this context, where there is a competing *Charter* claim, the balancing must include both sets of *Charter* protections, with an final express weighing of salutary and deleterious effects in the spirit of the final stage of *Oakes* and *N.S.*

I. The Statutory Objective

12. The Respondent LSUC discusses its statutory objective in depth.[9] LGBTOUT makes three further submissions with respect to LSUC's statutory public interest mandate.[10]

13. *First*, "public interest" includes the prevention of direct harm to vulnerable minorities, including LGBTQ people. LSUC prevented an equality infringement by ensuring that heterosexual and LGBTQ people have access to the same number of seats at LSUC-accredited

[8] *Doré* at paras 55-56
[9] *Factum of the Respondent, Law Society of Upper Canada*, at paras 15-24
[10] *Law Society Act*, s. 4.2(3), RSO 1990, c. L. 8

law schools. *Second*, even where LSUC cannot prevent direct harm to a minority community, the public interest is engaged where it is asked to condone that harm. Any endorsement of a policy of exclusion will reproduce many of the conditions that have led to deleterious consequences for LGBTQ people, discussed below. *Third*, public interest includes safeguarding the integrity and reputation of the legal profession. The legal profession has a "special role to recognize and protect the dignity of individuals and the diversity" of the profession.[11]

II. How to Best Protect *Charter* Interests

14. By accrediting a law school, LSUC endorses the school and its policies, and provides the students of that school with a simplified path to practice in Ontario. By refusing accreditation, LSUC merely acted to ensure that the number of seats at Canadian law schools *with a simplified path to practice in Ontario* remains equal for heterosexual and LGBTQ people. This result fulfills LSUC's statutory objectives, and absent accreditation, TWU students are still left "with a meaningful choice to follow [their] religious beliefs and practices."[12]

15. The analysis does not end there. The decision maker must consider how best to protect ***both*** sets of competing *Charter* interests. This necessarily includes consideration of the equality protections for LGBTQ people who would be negatively affected by accreditation. Respectfully, this Court cannot conclude that LSUC unreasonably limited TWU's religious rights without considering whether the opposite decision would have unreasonably limited LGBTQ equality rights. Otherwise, this Court risks minimally impairing one set of rights by maximally impairing another.[13] If this Court does not consider both sets of rights in tandem, the LSUC decision is

---

[11] *Trinity Western University v. The Law Society of Upper Canada*, 2016 ONCA 518 at para 131 [*TWU ONCA*], quoting Brian Dickson, "Legal Education" (1986) 64:2 Can Bar Rev 374 at 377
[12] *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37, [2009] 2 SCR 567 at para 88
[13] Gonthier J. dissenting on other grounds: *Dagenais v Canadian Broadcasting Corp.* [1994] 3 SCR 835 at 923

vulnerable at this stage *no matter which decision it makes*, leaving open the absurd possibility that *neither* accrediting nor refusing to accredit would satisfy this branch of the test.

III. Balancing Competing *Charter* Interests

16. There are two types of balancing contemplated at this stage. First, there is the kind of balancing between the infringed *Charter* protection and the statutory objectives contemplated by *Doré*. LSUC's factum covers this type of balancing in detail, and LGBTOUT adopts those submissions.[14] Second, there is balancing between *Charter* protections, which both the Divisional Court[15] and the Court of Appeal[16] recognized. Both Courts considered the severe deleterious effects of accreditation on LGBTQ people.[17] They considered competing *Charter* protections, weighed them, and found LSUC's decision reasonable. This balancing as between *Charter* protections amounts to a weighing of salutary and deleterious effects, in the spirit of the final stage of *Oakes* and the final stage of *N.S.* LGBTOUT offers the following additional submissions on this final balancing analysis.

a) Benchers properly considered submissions on deleterious effects

17. LSUC Benchers had before them submissions on the harms which directly flow from TWU's Admissions Policy.[18] The Policy offends the equality of LGBTQ people. It is deeply discriminatory, and this is most acutely felt by prospective law students, such as LGBTOUT's members. LGBTOUT adopts the submissions by the Interveners Start Proud and Outlaws on this point. No offence against equality should be taken lightly.

---

[14] *Factum of the Respondent, Law Society of Upper Canada*, at paras 103-129
[15] *Trinity Western University v The Law Society of Upper Canada*, 2015 ONSC 4250 at para 102 [*TWU Div Crt*]
[16] *TWU ONCA* at para 115
[17] *TWU Div Crt* at paras104-116; *TWU ONCA* at paras 115-119 and 130-138
[18] See, e.g. AB, Vol VIII, Tab 26 at 1312. The direct and immediate harm is the exclusion of LGBTQ people from the TWU law school seats.

18. Benchers were also entitled to consider submissions on the larger harms which arise from social exclusion, including: heteronormativity in the workforce;[19] increased difficulties in securing articling positions;[20] being closeted at work;[21] employment-based discrimination, including diminished incomes compared to similarly situated heterosexuals;[22] systemic discrimination, exclusion, and hatred related to sexual orientation;[23] bullying in schools;[24] a LGBTQ suicide rate three times the national average;[25] discrimination in the legal profession and legal education;[26] harms to personal confidence and self-esteem from being closeted;[27] and historic stereotyping, ridicule, assault, chemical castration, imprisonment and execution because of their identity.[28]

19. Benchers also considered the historical context, including submissions that until very recently, same-sex relationships were criminalized, and many Canadians lost jobs, family and housing if their sexuality was discovered by others. LGBTQ people were denied the right to marry, to share benefits or to adopt children. Being outed as a sexual minority exposed a person to allegations of mental illness and to being construed as a threat to national security. Their historical position exposed, and continues to expose, LGBTQ people to actual physical violence.[29]

---

[19] *Ibid* at p. 175, submission of Western Law Diversity Committee
[20] *Ibid*
[21] *Ibid* at p. 175
[22] *Ibid* at p. 1149, submission CUPE Legal Branch
[23] *Ibid* at p. 774, submission of Out on Bay Street
[24] *Ibid* at p. 175, submission of Western Law Diversity Committee
[25] *Ibid* at p. 779, submission of I. Loui Dallas; *ibid* at p. 857, submission of David Bronskill; *ibid* at p. 175, submission of Western Law Diversity Committee
[26] *Ibid* at p. 863, submission of the Ontario Bar Association
[27] *Ibid* at p. 124, submission of the Canadian Bar Association
[28] *Ibid* at p. 1033, submission of Criminal Lawyers' Association
[29] *Ibid* at p. 1117, submission of Prof. Angela Cameron et al.

b) This Court can take notice of deleterious effects where equality is offended

20. This Court is also entitled to take judicial notice that LGBTQ people have faced historical social, political and economic exclusion, and that they face such disadvantage to this day.[30] In *Withler*, this Court held that in assessing the deleterious effect of an impugned law or program, "evidence that goes to establishing a claimant's historical position of disadvantage or to demonstrating existing prejudice against the claimant group, as well as the nature of the interest that is affected, will be considered."[31]

21. In *Egan*, this Court recognized that disadvantages to LGBTQ people are pervasive in social, political and economic spheres. LGBTQ discrimination includes public harassment and verbal abuse, violence and victimization, unequal access to employment and services, and exclusion from public life. This Court further acknowledged that stigmatization and hatred have resulted in the closeting of LGBTQ people, which imposes unacceptable costs on them.[32]

22. Despite the hard-fought gains in legal rights, LGBTQ people remain a vulnerable group. They were among the last groups to be added to human rights legislation in Canadian jurisdictions, and they have lived under those policies' protections for shorter periods of time than other historically disadvantaged groups. As a result, LGBTQ people still live in social and economic contexts characterized by lack of family support, vulnerability to harassment, violence, negative social attitudes, and diminished opportunities.[33]

c) Accreditation would offend LGBTQ equality and increase deleterious effects

23. Had LSUC accredited TWU, it would have condoned TWU's discriminatory Admissions Policy and its deleterious effects on LGBTQ people. Condoning inequality perpetuates inequality.[34] LSUC's imprimatur for TWU would have widened the gap between a marginalized

---

[30] *Egan v Canada*, [1995] 2 SCR 513 [*Egan*] at pp 600-601; *Vriend v Alberta*, [1998] 1 SCR 493 at pp 543- 544; *M. v H.*, [1999] 2 SCR 3 at para 69; *R v Find*, [2001] 1 SCR 863 at para 48
[31] *Withler v Canada (Attorney General)*, [2011] 1 SCR 396 at para 38
[32] *Egan* at 600-601
[33] *Ibid* at 600-602
[34] *TWU Div Crt* at para 116

group and the rest of society, and perpetuated the disadvantage that LGBTQ people have suffered and continue to suffer to this day.[35]

24. When an institution like LSUC sanctions, condones, or replicates discrimination, it amplifies the physical, psychological and social effects associated with that discrimination.[36] LSUC's accreditation would impose a form of institutionalized shame and social exclusion that harms sexual minorities, and society generally, and turns back the clock on hard fought equality gains. Exclusion of a historically disadvantaged group from public opportunities conveys the denigrating message that those who are not part of the dominant group are not equal members of society.[37]

25. In *Marriage Commissioners Appointed Under The Marriage Act (Re)*, the Saskatchewan Court of Appeal considered proposed legislation that would exempt certain civil marriage officials from conducting same-sex marriages on religious grounds.[38] The Court concluded that the harmful effects of permitting such refusals outweighed any negative impact on freedom of religion.[39] It could not condone such discrimination, and it recognized the particular toll caused by refusing to recognize same-sex relationships:

> [The proposed legislation] would perpetuate a brand of discrimination which our national community has only recently begun to successfully overcome. It would be a significant step backward if, having won the difficult fight for the right to same-sex civil marriages, gay and lesbian couples could be shunned by the very people charged by the Province with solemnizing such unions.[40]

26. This Court must consider the distinctive nature of a legal education, which renders barriers to access particularly problematic. Exclusion in the context of legal education is

---

[35] "If the state conduct widens the gap between the historically disadvantaged group and the rest of society rather than narrowing it, then it is discriminatory": *Quebec v A*, [2013] 1 SCR 61 *per* Abella J. at para 332

[36] *TWU Div Crt* at para 116

[37] Denise G. Réaume, "Discrimination and Dignity" (2003) 63 La. L. Rev. 645 at 686, cited in *Quebec v A* . at para.198, per Lebel J.; *Egan* at 567

[38] 2011 SKCA 3 [*Marriage Commissioners*].

[39] *Ibid* at paras 92-99

[40] *Ibid* at para 94

insidious because it undermines the ethical underpinnings of the legal profession, and has the potential to undermine public confidence in the profession.[41] This form of exclusion debases the core legal principle that all people should have equal access to publicly available opportunities, including the opportunity to earn a law degree, practice law and to become a candidate for the judiciary.

27. The harms are not only felt by those directly excluded. The harms accrue to the LGBTQ community writ large, and to society in general, as seen in the proportionality analysis in *Re: Marriage Commissioners*:

> Second, and more concretely, allowing marriage commissioners to deny services to gay and lesbian couples would have genuinely harmful impacts.[…]
>
> Negative effects of this sort would not be restricted to those gay and lesbian individuals who are directly denied marriage services. *A more generalized version of it would obviously be felt by the gay and lesbian community at large and, indeed, there is no doubt it would ripple through friends and families of gay and lesbian persons and the public as a whole.* Simply put, it is not just gay and lesbian couples themselves who would be hurt or offended by the notion that a governmental official can deny services to same-sex couples. Many members of the public would also be negatively affected by the idea. [42] [Emphasis added]

28. If TWU sought to exclude a different historically marginalized group from accessing legal education – for example, inter-racial couples – there can be little doubt that LSUC and other government actors would categorically refuse to approve or accredit the institution.[43]

29. The Admissions Policy not only excludes sexual minorities from a law school, but does so based on highly stigmatizing and prejudicial attitudes.[44] This exacerbates the prejudice and

---

[41] *TWU ONCA* at paras 130-132

[42] *Marriage Commissioners* at paras 95-96

[43] See e.g., *Bob Jones University v United States*, 461 US 574 (1983); *TWU v British Columbia College of Teachers*, [2001] 1 SCR 772 at 70-71; *TWU ONCA* at paras 136-138

[44] The Community Covenant refers to certain acts, including sexual intimacy outside of heterosexual marriage, as being "destructive", and deems such conduct illicit and non-virtuous: Affidavit of Pamela Klassen sworn 23 October 2014, AB, Vol VIII, Tab 24 at 1312

harms to LGBTQ dignity.[45] In *R v Kapp*, this Court identified human dignity as "an essential value underlying the s. 15 equality guarantee".[46] Human dignity is crucial because it provides a group with self-respect and self-worth:

> It is concerned with physical and psychological integrity and empowerment. *Human dignity is harmed by unfair treatment premised upon personal traits or circumstances which do not relate to individual needs, capacities, or merits*…Human dignity is harmed when individuals and groups are marginalized, ignored, or devalued, and is enhanced when laws recognize the full place of all individuals and groups within Canadian society.[47] [Emphasis added]

CONCLUSION

30. This Court must assess whether LSUC struck a proportionate balance when it refused to accredit TWU's proposed law school. This Court must apply *Doré* while remaining alive to the competing *Charter* interests at stake. The equality interests of LGBTQ people must weigh heavily in the balance, especially at the final stage of its analysis. Equality rights matter, and the harms of discrimination have real and severe consequences in the lives of LGBTQ people. A profession whose most senior and respected members – Benchers – have condoned discrimination contributes to a social and political climate of subtle and understated homophobia, and its associated harms.

PART IV – COSTS and PART V – ORDERS SOUGHT

31. LGBTOUT does not seek costs and asks that no costs be awarded against it. Leave was granted to make oral argument for five minutes in the Order of McLachlin C.J. of July 31, 2017.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Ottawa, this 11th day of September, 2017.

_____

Angela Chaisson and Marcus McCann, Lawyers for LGBTOUT

---

[45] *Saskatchewan (Human Rights Commission) v Whatcott*, [2013] 1 SCR 467 at paras 121-124
[46] *R v Kapp*, [2008] 2 SCR 483 at para 21
[47] *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497 at para 53

PART VI: TABLE OF AUTHORITIES

Authority	Paras.
JURISPRUDENCE	
Alberta v Hutterian Brethren of Wilson Colony, [2009] 2 SCR 567	14
Bob Jones University v United States, 461 US 574 (1983)	28
Doré v Barreau du Québec, [2012] 1 SCR 395	7, 8, 10, 11, 16, 30
Dagenais v Canadian Broadcasting Corp, [1994] 3 SCR 835	15
Egan v. Canada, [1995] 2 SCR 513	20, 21, 22, 24
Law v Canada (Minister of Employment and Immigration), [1999] 1 SCR 497	29
Loyola High School v Quebec (Attorney General), [2015] 1 SCR 613	8, 10
Marriage Commissioners Appointed Under The Marriage Act (Re), 2011 SKCA 3	25, 27
M. v H., [1999] 2 SCR 3	20
Quebec v A., [2013] 1 SCR 61	23
R v Find, [2001] 1 SCR 863	20
R v Kapp, [2008] 2 SCR 483	29
R v N.S., [2012] 3 SCR 726	9, 11
R v Oakes, [1986] 1 SCR 103	9, 11
Re Vancouver Sun, [2004] 2 SCR 332	8
R v Rodgers, [2006] 1 SCR 554	8
Saskatchewan (Human Rights Commission) v Whatcott, [2013] 1 SCR 467	29
Slaight Communications Inc v Davidson, [1989] 1 SCR 1038	8
Trinity Western University v British Columbia College of Teachers, [2001] 1 SCR 772	28
Trinity Western University v. The Law Society of Upper Canada, 2015 ONSC 4250	16, 23, 24
Trinity Western University v. The Law Society of Upper Canada, 2016 ONCA 518	13, 16, 26, 28
Vriend v. Alberta, [1998] 1 SCR 493	20
Withler v Canada (Attorney General), [2011] 1 SCR 396	20

STATUTES, REGULATIONS ETC.	
Law Society Act RSO 1990, c. L. 8	12