

Donlevy: Judgment Day – The Trinity Western Law School Decision

*What is good, true, and just in religion will not always comport with the law's view of the matter, nor will society at large always properly respect conscientious adherence to alternate authorities and divergent normative, or ethical commitments. Where this is so, two comprehensive worldviews collide. (Former Chief Justice of the Supreme Court of Canada, Beverly McLachlin, 2004.)**

On Friday, June 18, the Supreme Court of Canada handed down its 7 to 2 decision against Trinity Western University Law School. In a complex judgment, with four opinions, the court held that both the Ontario and British Columbia law societies could refuse to accredit the proposed law school, hence preventing its graduates from being accepted for legal articles in those provinces. This has stopped Trinity from opening its law school, as it must have the approval of the Province of British Columbia to do so, and it cannot receive that approval if the Law Society of British Columbia will not accredit it.

The court based its decision on the finding that the law societies had properly balanced the right of their societies to promote equal access to the legal profession, to pursue diversity in the legal profession, to maintain a positive image for the profession in society, and to prevent the risk of significant harm to those who, being in a protected class of persons, breached Trinity's Community Covenant, against the Trinity University community's right to religious freedom.

The opposing law societies' objection to approval of Trinity's proposed law school was based upon Trinity's Community Covenant. That covenant, required to be signed by all students and professors, prohibited engagement in sexual acts except within a heterosexual marriage. A breach of the covenant could result in penalties including suspension or expulsion from Trinity. The court agreed with the law societies that such a restriction was not necessary for a legal education and that it in effect resulted in raising a discriminatory barrier restricting non-heterosexuals and others from being considered for any of Trinity's 60 law school seats.

Two justices disagreed with the majority, stating that the law societies should only determine the fitness, technically and ethically, of law school graduates to practise law and, as these points were never in question, Trinity should have received accreditation.

In essence, the court's position was that although a private, religiously based institution offering a university education may impose attendance conditions, it could not reasonably expect that a statutory body acting in the public good

would necessarily accept the credentials granted by that institution where the granting had, through its institutional admittance policy, discriminated against a protected class of persons.

“Of what value to Canadians are the words ‘freedom of conscience and freedom of religion’ if the exercise of those rights cannot be freely expressed and shared within the individual’s own faith community?”

The decision is of great concern as it undermines Canadians’ rights to freedom of conscience, religion, and association. Conscience is the innate gift, given to all individuals by our creator, not the state, which whispers in the soul to choose the good, and which judges us after the fact, if we choose to ignore it. Religion is also a gift sought by many; and, once found, cherished as giving meaning and purpose to our lives. The freedom to freely associate in community allows those of sincere faith and belief to follow their conscience, practise their religion, and do so in relationship with others. This is what Trinity and its community chose to do in their private university. Yet they are now told that they cannot do so without suffering penalties imposed by the state.

Given the above, the question to consider is, “Of what value to Canadians are the words ‘freedom of conscience and freedom of religion’ if the exercise of those rights cannot be freely expressed and shared within the individual’s own faith community?” What is the nature of a state that demands from its citizens that as a precondition to being able to fully participate in society, a religious community must first abandon its religious beliefs? Surely this state requirement is contrary to the very idea of freedom in a free, liberal society. However, the court’s decision is in alignment with the message given by the current federal government in the controversy concerning the Canada Summer Jobs Program. That message is that Canadians must first set aside their freedom of conscience, deny their religious beliefs, and publicly acknowledge and accept the current majoritarian secular values before they may fully participate in Canadian society.

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Some will say, as did the majority in Trinity, that the restrictions on the Trinity community are “of minor significance” and that this decision is really about balancing rights, freedom of religion, and the right not to be discriminated against if one is in a protected class of people. That binary analysis is misconceived.

The fountainhead of all human rights is freedom of conscience, for without that right no other right has any value whatsoever. It is fundamentally relational

and requires that it be lived out in community. When the state requires that members of a religious community deny their fundamental beliefs in order to fully participate in the wider society, this is not evidence of a free society. Indeed, it causes one to ask, "Who is next to be excluded from participation because she or he will not publicly deny their conscience and their faith or simply refuse to publicly endorse a state-mandated belief?"

Today it is the Trinity Western University community. Tomorrow it may be members of the synagogue, the temple, or the mosque who are told by the state that in order to fully participate in Canadian society they must publicly deny one or more of their religious beliefs. As a result of the Trinity decision, Canada is a less tolerant, less liberal, and less free country. However, people of faith are reminded of the words of St. Peter:

Dear friends, do not be surprised at the fiery ordeal that has come on you to test you, as though something strange were happening to you. But rejoice inasmuch as you participate in the sufferings of Christ, so that you may be overjoyed when his glory is revealed. If you are insulted because of the name of Christ, you are blessed, for the Spirit of glory and of God rests on you. (1 Peter 4:12-13)

*Beverly McLachlin, "Freedom of religion and the rule of law: A Canadian perspective" in Douglas Farrow, ed, *Recognizing religion in a secular society: Essays in pluralism, religion, and public policy* (Montreal: McGill-Queen's University Press, (2004) 12 at 21 [McLachlin, "Freedom of religion"]

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