

Trinity Western decision delivers severe blow to religious freedom and diversity, say advocates

OTTAWA—The Supreme Court of Canada's June 15th decisions on Trinity Western University's (TWU) proposed law school have delivered a severe blow to religious freedom and diversity, say advocates.

Canada's highest court released two 7-2 rulings on Trinity Western's proposed law school, affirming the decisions of both the Law Society of Upper Canada (LSUC) and the Law Society of British Columbia (LSBC) not to accredit the future law school. The court issued two decisions because the Ontario law society won at both lower court levels, while the B.C. society lost.

At issue was the privately funded, evangelical Christian university's mandatory community covenant, which requires students to abstain from sexual activity outside of traditional marriage between a man and a woman.

"This decision . . . effectively relegates freedom of conscience and religion out of Section 2 of the Charter," said Andrew Bennett, Canada's former Ambassador of Religious Freedom who is now director of Cardus Law.

"Clearly by the decision today, they are stating that as long as you live your faith privately and within the four walls of your place of worship, that's acceptable," Bennett said. "But any expression of belief, any association that in its very essence asserts a particular belief, that's unacceptable."

"The courts have effectively ... affirmed a conflict between sexual identity and religious identity," Bennett said. "We cannot build a society based on that understanding. We cannot build a society where we challenge implicitly a person's human dignity because they hold beliefs that run counter what is a prevailing secular value. This is a very disconcerting decision."



Most Rev. Michael Miller, Archbishop of VancouverArchdiocese of Vancouver

Archbishop Michael Miller of Vancouver, whose diocese includes Langley, B.C., where TWU is located, said he was saddened by the decision “with its potential to undermine freedom of religion, conscience, and association in Canada.”

“The decision runs counter to Canada’s tradition of balancing rights and freedoms, and the implications of this decision for constitutional freedoms in Canada are severe,” Archbishop Miller said in a prepared statement.

The Archdiocese of Vancouver intervened in the TWU case jointly with the Catholic Civil Rights League and the Faith and Freedom Alliance.

“With this decision, the court has moved away from our historic tradition of reconciling competing rights, and closer to a prioritization of rights, essentially ruling some are more important than others,” Archbishop Miller said. “Perhaps more disturbing is that the court has undermined rights actually written in the Charter in favour of unwritten charter values.”

The Catholic Civil Rights League predicted the ruling “will cast a pall on the future interface between religious viewpoints and state engagements in the public square.”

“Questions will now be raised on continued or future access to state benefits, public funding, or government approvals of available programs,” the league said in a news release.

“While members of the majority expressed statements that their ruling was based on the importance of the public perception of legal practitioners and the means to becoming a lawyer, today’s ruling will provide a launching pad for future attacks on the continued access of religious organizations to public benefits.”

In the two 7-2 decisions, the majority ruled TWU's covenant discriminated against equal access to the law profession by lesbian, gay or other sexual minority students. The justices said the law societies were right in rejecting the proposed law school's accreditation because of their respective public interest mandates to ensure equal access by LGBTQ students to the law profession. The main decisions were written by five justices. Two justices wrote concurring decisions with separate arguments. Two justices dissented, arguing TWU should have been accredited.

"In our view, the LSUC was entitled to conclude that equal access to the legal profession, diversity within the bar, and preventing harm to LGBTQ law students were all within the scope of its duty to uphold the public interest in the accreditation context, which necessarily includes upholding a positive public perception of the legal profession," the majority ruled in the Ontario case, with similar arguments in the B.C. case. "To begin, it is inimical to the integrity of the legal profession to limit access on the basis of personal characteristics."

"This is especially so in light of the societal trust enjoyed by the legal profession," the decision said. "As a public actor, the LSUC has an overarching interest in protecting the values of equality and human rights in carrying out its functions."

"It's a terrible, terrible decision," said constitutional lawyer Iain Benson, who now teaches law in Australia. "It's a very dark day in Canadian legal history."

According to the majority view on the Supreme Court, "the standard religious position on sexual morality no longer accords with a reading of public interest," Benson said. "That is extraordinarily serious. It has the potential to open up whole swaths of Canadian culture to scrutiny under so-called Charter values."

"This has now opened the door to all kinds of claims that will come against private religious organizations that hold to the traditional definition of marriage," said Barry Bussey, director, legal affairs for the Canadian Council of Christian Charities. During arguments in the TWU cases late last year, Bussey warned that ruling against TWU would open an abyss that jeopardizes any group, charity, or individual requiring accreditation or licensing by the state.



Andre Schutten, director of law and policy at ARPA Canada Deborah Gyapong, CCN

André Schutten, director of law and policy at the Association for Reformed Political Action (ARPA) Canada, said he was “disappointed the decisions did not wrestle with the law,” but the majority “grounded their reasons in a nebulous concept of Charter values and they did not point back to the Constitution, they did not point back to the law.”

ARPA Canada’s legal counsel, John Sikkema, pointed out that TWU followed “all the relevant rules” to gain accreditation for its law school but that the Court ruled “a law society can decide what public interest means.”

“There’s no way for a school like Trinity Western to know that in advance,” he said.

Schutten said the court ruled that the law societies’ fear of negative public perception was a legitimate reason to reject TWU, but there are also negative public perceptions around the opposing view.

“In any case, neither the law societies nor the courts are in the business of public opinion polling, nor should they make decisions based on prevailing public opinion on sensitive issues.”

“The majority also fails to recognize the public interest benefits of a diversity of educational institutions and a diversity of moral and philosophical perspectives in the legal profession,” said Sikkema. “It is not against the public interest for individuals or civic institutions to hold to different views on sexual morality and marriage.”

Earl Phillips, executive director of TWU’s proposed law school, called it “a lost opportunity for Canadians.”

“There are only three common law schools in Canada that offer a course in charity law,” he said. “The TWU law school would have offered a specialty in charity law. Because Canada has the second largest charitable and non-profit sector in the world, this loss stands to impact Canadians coast to coast.”

“Without question, the Trinity Western community is disappointed by this ruling,” said Phillips. “However, all Canadians should be troubled by today’s decision that sets a precedent for how the courts will interpret and apply Charter rights and equality rights going forward.”

Janet Epp Buckingham, director of TWU’s Laurentian Leadership Centre and one of the architects of the proposed law school, described the decision also as loss for diversity in Canada.



Janet Epp Buckingham, a TWU professor one of the architects of the proposed law school, said she was saddened by the decision. Deborah Gyapong, CCN

“Canada has traditionally upheld values of diversity for a broad array of religious views, so we’re very disappointed in the way the Supreme Court of Canada has ruled today,” she said.

Asked if TWU will consider dropping the covenant, Buckingham noted that the university has not broken any laws and “We are going to continue operating as a Christian university as we have.”

Any decision regarding the covenant would have to be addressed by the university’s board of governors.