

Religious Freedom — The Case of Trinity Western University

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Preacher: Dr. George Egerton

[0 : 00] Yes, I am happy to be back amongst my friends at St. John's. Believe it or not, this is the fifth time I've talked about this topic.

I hope I can find something new to say. I can, because it is an ongoing topic. And I was last at Lerner's Exchange in April of 2015.

I was going to say 1915, but I'm still in that century. And there have been very important developments on this crucial test case.

I'm going to say a few things soon about why this is a very, very important case. But there have been new developments. And today I'm going to be talking primarily about what the Court of Appeals for British Columbia has ruled as of last November regarding the ongoing attempt by Trinity Western University to establish a law school.

And that's the Court of Appeals is good news. So we're going to have some good news today, but not without a lot of controversy and a lot of questions.

[1 : 28] As this ruling will, and indeed the Supreme Court of Canada has just last month said that it would hear the appeals from Trinity Western and from the Law Society on the ventures of British Columbia then.

So it's going right to the top and it will be a very, very important decision, not just for Trinity Western, but for all of us. Christians, faith communities in Canada, the nature, it's a constitutional question.

And it's a very, very important one then. So, now what is at stake here? And for Trinity Western and for Christian faith communities in Canada, it is really a question of the nature of Canadian pluralism in a modern culture which has been transformed over the last 50, 60 years.

And what religious freedoms, religious rights and freedoms, as it's put in the Canadian Charter of Rights and Freedoms, how they are to be exercised.

What will be their limitations? In face of the challenges of an increasingly secularist society where, as we will see at the heart of this dispute, equality rights, which have equal standing in the rights that are set out in Section 2 and Section 15 of the Canadian Charter of Rights and Freedoms.

[3 : 34] So here there is a tremendous conflict going on. And this is what has been going through the courts and through much of the discourse in law societies across Canada, the Canadian Bar Association, and indeed then the courts.

So the issues are very, very important ones. Now, I am approaching this through what I hope a good number of you will remember, the outlines of a long-term project I have, which is examining law and politics in Canadian culture since really the Second World War.

And as I said earlier, I've published several articles on all of this. And I'm now at the stage of all of this that I want to tie it all together as the culminating project of my career, actually, as a historian, and publish it in book form.

But let me say, never change houses when you have projects like this. And most of my time right now is putting down insulation and flooring in the attic so I have room to store all the stuff that I've collected, and I have to sort it out and add it into the material that I've already published.

But a very quick review now. Just forget about that. I'm going to talk about it. The various stages and changes of the nature of Canadian jurisprudence and pluralism within that really since the beginning of Canada.

[5 : 29] And I'm just going to say a very brief review of all of this because then I'm going to focus on the ruling from the British Columbia Court of Appeal.

But it fits into this broader context that I want to just say a few things about. From the beginning, Canada was what finally was articulated by the mid-20th century or by the time of the Second World War.

Canada was a Christian democracy. If there was pluralism, then it was a Christian pluralism, a denominational pluralism, particularly a pluralism between Catholic Canada centered in Quebec and Protestant Canada and its denominations throughout the rest of Canada.

It was a type of Christendom. And so that's the first type of pluralism we have. This lasts through the Second World War and into the 1950s, but then things begin to change.

We shift from a Christian, manifestly Christian pluralism, although it's not an establishment pluralism or Christian establishment like our British tradition, neither is it a separationist situation as you have in the United States where an establishment is proscribed and church and state are supposed to be separate.

[7 : 09] Indeed, the British and the Americans and the Canadians all functionally are the same, as there is a Christian religious hegemony through this period that articulates and serves as a foundation for public morality and law.

Now, by the time of the 1950s, things are beginning to change. A major element in all of this is what happens during the Second World War in terms of the Nazi attempt to liquidate the Jews and several other communities as well, too.

So in the 1950s, the Jewish communities in Canada are brought into the religious condominium, and we have then no longer a manifestly Christian pluralism, but a religious pluralism.

And this is articulated most, and I've published in all of this, when it comes to the Diefenbaker period to write a Canadian Bill of Rights, which he and the Conservative Party always love to call the Diefenbaker Bill of Rights.

But it was manifestly not explicitly Christian, but it was more broadly inclusive, and the Jewish community is the community first embraced in all of this then, and they were happy to cooperate in the shaping of the Canadian Bill of Rights, which was legislated in 1960.

[8 : 50] By the time of the centennial of Canada, Expo 67, things had shifted more, the growing number of migrants from Muslim countries, growing Muslim, Hindu, Buddhist population in Canada, along with other non-Christian religious communities.

We have under the Pearson government, again, quite manifestly, a liberal pluralism, which is no longer manifestly Christian or even faith-based, but all of the communities are drawn in, and you can see this in how Expo is set up with various religious groups setting up their pavilions, including two Christian pavilions.

There was the Christian pavilion, and then the, what was it called, the sermons from science that represented most of the evangelical churches at Expo, quite successfully.

But it was seemingly a happy situation where the government was positive in encouraging the faith communities of Canada to have public life, public visibility, public participation, as symbolized in Expo 67.

Then we come to that great watershed decade, as historians and others see it now in greater clarity, the 1960s, where everything seemingly changes.

[10 : 32] In all the Western modernized countries, the old social structures and politics of Christendom came apart. challenged by new migration patterns and demography, declining church membership status and influence, the civil rights, the human rights movement, indeed the human rights revolution that takes off through this period, the pill and the massive sexual revolution of that period.

In Canada, beyond all of these massive changes taking place as part of Western cultural transformation, we have the added challenge of the quiet revolution and French-Canadian nationalism.

And here we get, of course, to Pierre Trudeau. I've talked a fair amount about him before, so I won't say too much more now, other than that he is very, very central to what happens in the type of leadership.

This is a wonderful example of one of our great, long-since-dead historians, Donald Creighton. Creighton saw history as the juncture of character and circumstance.

And in Canadian history, there is no greater example of Trudeau grabbing the circumstances and exercising a transformative leadership.

[12:08] As justice minister first, and then as liberal prime minister after 1968. It was Trudeau who charted a new liberal Canada.

And you will remember many of these terms in bilingualism, biculturalism, then multiculturalism, participatory democracy, and a new pluralism to address the multiple revolutionary challenges faced in Canada by the late 1960s.

And then finally, his culminating legacy, a human rights revolution entrenched in the Canadian Charter of Rights and Freedoms, the first section of the new Canadian, the patriated Canadian Constitution of 1982.

Now, at the core of Trudeau's agenda was, and here you have to understand the background of his role in Quebec and the era of Duplessis and Catholic Christendom in Quebec, but it was central to Trudeau, indeed, to get religion out of politics.

And I think it's worth quoting this again, because it's so central in terms of his legacy, what happens, what goes into the Constitution, and in our particular focus today, the standing and role and functions of religion in Canadian society.

[13:50] He addressed Parliament then in, this is in 1967, on the cardinal themes of the new jurisprudence and what we can call a secularist pluralism.

We are now living in a social climate in which people are beginning to realize, perhaps for the first time in the history of this country, that we are not entitled to impose the concepts which belong to a sacred society upon a civil or profane society.

The concepts of civil society in which we live are pluralistic. Here's the term, and it has been used for some time, and Louis Saint Laurent used this term way back in the 1950s, and legal writing and discourse in Canada was focusing on this.

And Trudeau picked up much of this theory in his studies in France, in England, and particularly in Harvard. But anyway, the concepts of the civil society in which we live are pluralistic, and I think this Parliament realizes that it would be a mistake for us to try to legislate into this society concepts which belong to a theological or sacred order.

Okay, you can see Duplessis turning in his grave at that point. He was dead by this time, but this was a direct challenge, not only to Catholic Quebec, but to the rest of Canada too, and the central role that religion had played in culture, law, constitutional reality.

[15:32] Okay, then as Trudeau's grand design for constitutional reform unfolded, and when we got into the actual drafting of the Canadian Charter of Rights and Freedoms within the newly patriated Canadian Constitution, as the old BNA Act was brought back from Britain and then written into Canadian constitutional law, Trudeau was opposed very explicitly to any reference in the Charter of Rights to a religious and transcendent foundation then.

And so there was a great discourse on the role of God in the Canadian Constitution. Trudeau, and let me quote him again, you've heard this before, but let me say that I was the one that got this one out of the archives in interviewing members of the Liberal Party.

Trudeau, as there was a cry to honor the long-term tradition of Canada as under the sovereignty or supremacy of God, what Trudeau opposed all of this.

What Trudeau wanted was, yes, let's politically handle this by putting a reference to God in the national anthem. So that's why we have God keep our land glorious and free.

That was Trudeau's idea. But he didn't want it in the Constitution. And what he said in the Liberal Caucus is quite typical of his expression and rhetoric.

[17:18] He said, I don't think that God gives a damn whether he's in the Constitution or not. Okay, and so we have that legacy there.

Now, he lost this fight. The conservatives mobilized along with major Protestant, evangelical, Catholic communities in Canada. And they got more friction and more correspondence and lobbying on this than any other issue as the Constitution was being drafted.

And finally, the liberals bent. Trudeau was advised by the linkage within the Liberal Party that if he didn't put this in the Constitution, the conservatives would have this forever and ever, and it would cost the liberals, to put it mildly, a hell of a lot of votes in the future.

It was Senator David Smith that gave me all the inside stuff on all of this. He was the Liberal Senate leader until now.

There are no liberals, apparently. They're all independent senators. I don't believe it. So it got into the Charter, but it was over the opposition of the governing party.

[18 : 41] And certainly Jean Chrétien, who was Justice Minister, was deeply opposed to all of this. Well, Trudeau didn't get his way, but in many ways we have been living in the age of Trudeau since the 1960s, and I see three distinct types or visions of pluralism which are struggling for primacy in Canadian jurisprudence.

First, an open liberal pluralism, the pluralism favored by the Pearson liberals, which welcomes or at least permits religious participation in public life.

Secondly, the Trudeau or Chrétien type of secularist pluralism, very powerful in Quebec, most powerful there than any part of Canada, but this is a type of exclusionary secularist pluralism which assigns religion to the private sphere.

And thirdly now, and this is where I think we see the courts moving more and more intentionally and explicitly, what we could call a neutral or neutralist pluralism, where the state adopts a strictly neutral position regarding religion in the public sphere, but including now fully the rights of atheists. Now, how do you balance all of this? Not an easy task by any means, but this is the language and in case law what is happening in Canada now.

[20 : 32] Indeed, there has been much significant case law in recent years where the focus has increasingly centered on the contest between religious freedom rights of individuals and their religious communities and, on the other hand, equality rights claiming charter protections against discrimination.

So these are the key words. And Section 15, which addresses discrimination and lists the types of discriminations that are illegal and those rights, as we all know, have been expanded by written in and, you know, case laws from sex to sexual orientation was written in.

That's the key thing. And this is at the heart of much of what I'm addressing today then. So, here we come to Trinity Western University.

Now, there's really just one screen that I want to pull up here and we'll get to it if we can when I actually get to it. Now, in June of 2012, after much careful preparation, Trinity Western University presented a proposal to establish a faith-based law school, presented this to the BC Minister for Advanced Education and the Federation of Law Societies of Canada to seek the necessary permissions and accreditation.

Some 60 law students would be enrolled beginning September of 2016. Well, it hasn't happened and we're now in 2017 and it won't happen this year.

[22 : 28] It may happen in the fall of 2018 if things go well with the Supreme Court of Canada. But anyway, there's been much delay in all of this.

Now, things went well through the first phase and in December of 2013, the BC Minister and the Federation of Law Societies, indeed which was established by the bar associations across Canada or the law societies across Canada to handle the applications for new law schools in Canada.

So that was Trinity Western went through all of the necessary hoops and got the permission of the minister, the BC Minister, and the Federation of Law Societies.

And the law society, represented by their executives, the benchers, as they're called in BC, they also gave approval to the Trinity Western case on the usual merits, treating them like everybody else, quality of students, faculty, capabilities, a good curriculum, the resources to operate this kind of a school, the distinctions of their program and mission.

All of this was fine. So Trinity Western passed all the hurdles, and this was despite Trinity Western's transparency about their confessional nature and their community covenant, which all students and members of the university had to adhere to.

[24 : 19] They had to sign on to this if they wanted to teach there, if they wanted to work there, if they wanted to be students there. So this was up front, nothing being hidden.

The covenant, which is the heart of the whole controversy here, we'll see, did not require students and others to agree to a religious or theologically grounded creed of faith or statement of faith. Rather, it requires pledges to behave according to specific norms which reflect the confessional basis of the university. Most of these behavioral norms are standard, as standard as they are exemplary, both positively and proscriptively.

I'm not going to list them all, but, you know, this is the road to sainthood for Christians and for all of us. This is what we would aspire to do, accept the divinely inspired Bible as a guide to holy life, modeling one's life on the example of Jesus.

But in the detailed norms listed, members of Trinity Western pledged not only to cultivate these Christian virtues, but to abstain from, and here I quote, this is the crux of the matter, sexual intimacy that violates the sacredness of marriage between a man and a woman.

[25 : 47] Okay, you can see where that's going to lead to. Indeed, it was this prescription of sexual intimacy outside of marriage between a man and a woman that sparked impassioned objections from the LGBT community and their advocates, including human rights commissions, lobbyists, progressive academics, the Canadian Bar Association, the deans of law schools across Canada, and then the programs in several universities, including UBC, Simon Fraser, that focused on gender and women's studies, and, of course, the LGBT community itself and the media that supported them.

This became a cause celebre. Soon a very effective campaign was mounted calling for the suppression of Trinity Western's law school plans as such an institution would promote unlawful and damaging discrimination against the LGBT community, especially those who were in same-sex marriages.

And, of course, that became legal in Canada, same-sex civil marriage as of 2005. So Trinity Western was proscribing something that was legal.

So this became a very controversial confrontation. Soon, lawyers and their bar associations took notice of all of this, and although the Federation of Law Societies of Canada had affirmed Trinity's applications, and although the executive of the Law Society of British Columbia, the ventures, had done the same, several of the provincial law societies now had second thoughts, including the Law Society of British Columbia.

And several of these law societies then held special meetings and votes which, in motions or resolutions that were passed, aimed to prevent recognition of graduates of Trinity Western University proposed law school.

[28 : 11] Unless the community covenant was made voluntary or amended to remove the objectionable items. Now this came as a shock to Trinity Western leaders who had carefully played by all the rules and counted on the rulings by the Supreme Court of Canada in the most important of the previous precedent cases in this matter, the ruling of the Supreme Court of Canada in Trinity Western University versus the BC College of Teachers where the court ruled that the BC Teachers College's attempt to deny accreditation to graduates of Trinity Western University, their education faculty, was unlawful on several grounds.

Notably, the right to freedom of religion, section 2A of the Canadian Charter of Rights and Freedoms, in the absence of any evidence that Trinity Western students were prone to illegal discriminatory behavior.

So that was a very, very important precedent. And Trinity Western was counting upon that and that was holding through the initial stages of applications for this accreditation.

Now, as I argued when I was here two years ago in April of 2015, it was in Nova Scotia where the first round of this battle would be played out, where Trinity Western University had appealed for judicial review of the regulations passed by the Nova Scotia Barristers Society, which denied recognition in the province, Nova Scotia, of graduates of Trinity Western University Law School unless the community covenant was made voluntary or amended to remove its illegal discriminatory pledges, which, as counsel for the Nova Scotia Law Society said, cultivated homophobia.

So, all the expressions are being used here. The principal arguments of the Nova Scotia Bar Society and other critics were that Trinity Western's covenant fostered discrimination prohibited by Section 15, the equality section of the Charter of Rights and Freedoms, and that the Supreme Court ruling of 2001, which protected the teachers training program at Trinity Western, no longer was applicable because Canadian society had moved on progressively and had passed legislation supporting same-sex civil marriage, and so the times were different and you couldn't simply go back to 2001 to allow this type of a program.

[31 : 36] Okay. As well, the law societies, they claimed were required to act in the public interest to serve as guardians against discrimination within their own profession and more broadly in Canadian society, and that to permit the operation of Trinity Western's law school would send the wrong signal to the LGBT community and to Canadians generally, especially since Trinity Western sought accreditation from government or quasi-governmental regulatory institutions, where secularist principles demanded strict neutrality, not affirmation of religion.

So, soon other provincial bar associations or law societies jumped in and the really, I mean, the key associations are the Upper Canada Law Society, the Nova Scotia Law Society, the BC Law Society, these are the most important and all of them indeed came out in opposition to accreditation of Trinity Western University, the program for a law society.

There was support from Alberta, Saskatchewan, New Brunswick, Prince Edward Island, and the Yukon. They either gave their support or they simply said it's not within our jurisdiction to tell BC lawyers what to do or what not to do, or Trinity Western for that matter.

So, obviously, the legal profession in Canada was deeply divided on the Trinity Western proposed law school. But the fact that the most influential law societies were opposed to this, indeed, was very alarming then for the cause of religious freedom and to Trinity Western's desire to establish this school.

Now, one of the, I should just pause here for a second, one of the really interesting things, I mean, these debates are dramatic. They are full of legal expertise and language.

[34 : 08] I'm not a lawyer, but I've had to learn an awful lot of legal jargon in all of this, but it's very impressive too, because here is the profession of law in Canada at its most intense, and they are struggling with all of this.

It's passionate, but unlike many other parts of the world, we have, you know, we do this in Canada in civil ways. Now, sometimes the heat overcomes the civility, and people start shouting at each other, I think it's happened at UBC on these questions, but nevertheless nobody's shooting anybody else, and we, you know, we have to remember that this is very, very important, but the fact is that not only are major principles at stake here, but it's the lawyers themselves that are up for grabs, and so this adds a tremendous element of drama, and high level discourse to the debate, so I've indeed enjoyed much of reading into all of this.

So, the fact is, you have, with this confrontation, the law society is doing one thing, including reversing themselves then in BC, they don't want Trinity Western to proceed, there's massive mobilization all around this question, and the newspapers cover this quite intensively as well, but it is obviously a major issue of jurisprudence.

Trinity Western is well-counseled in all of this, well-experienced, and indeed makes sure that they get the appeal procedures going.

And so, right across Canada, from Nova Scotia to British Columbia, you have an intensive period of what is called judicial reviews then.

[36 : 14] And in this, Trinity Western does fairly well, and one is impressed by the level of counsel and support in the terms of interveners that have come along beside Trinity Western University.

As we saw when I last addressed this group in March and April, well, it was early, I addressed the group in April, but it was in January of 2015 that the Nova Scotia court under Jamie Campbell issued their ruling, which was fully supportive of the religious freedom rights of Trinity Western University.

The Upper Canada Law Society, Trinity Western appealed their resolution, refusing to recognize accreditation, and the court supported them through an initial ruling and an appeal ruling in Ontario. Now, that is very, very central to the whole course of jurisprudence in Canadian law. In BC, we did well in the initial appeal, and in then the recent ruling of the British Columbia Court of Appeal. Now, can I get this up here? Because I'm going to cite this ruling. How am I doing for time? We're going to run out of time. It's on page four.

[37 : 57] Okay, here we are. This is the heart of the ruling then from the BC Court of Appeal. It is their summary, and I couldn't do a better job than is put up here.

So, let's just go over it briefly. The Law Society decided not to approve a law school. That's the BC ventures, because students attending TWU must sign a community covenant which does not recognize same-sex marriage.

Trinity sought judicial review. The decision was set aside by the chamber judge. That was the first level of Trinity's appeal. So, they won that one. The Law Society appealed that ruling, and now in the BC Court of Appeal, it is held.

The appeal then is dismissed. Okay, so that's what Trinity Western and their council wanted. The issue on appeal is whether the Law Society met a statutory duty to reasonably balance the conflicting charter rights engaged by its decision.

The sexual orientation equality rights of LGBTQ persons, and the religious freedom and rights of association of evangelical Christians.

[39 : 17] The benchers initially voted to approve Trinity's law school, as I don't know what I said. That decision was met with a backlash from members of the Law Society who viewed it as an endorsement of discrimination against LGBTQ persons.

The benchers decided to hold a referendum and to be bound by the outcome. The majority of lawyers, I think it was about two to one, voted against approval. The benchers then reversed their earlier position and passed the resolution not to approve Trinity's law school.

In doing so, the benchers abdicated their responsibility to make the decision entrusted to them by the legislature. They also failed to weigh the impact of the decision on the rights engaged.

It was not open to the benchers to simply adopt the decision preferred by the majority. The impact on charter rights must be assessed concretely based on evidence not perception.

The evidence before the law society demonstrated that while LGBTQ students would be unlikely to access the 60 additional law school places at Trinity's law school if it were approved the overall impact on access to legal education and hence to the profession would be minimal.

[40 : 34] Some students who would otherwise have accepted or have occupied the remaining 2,500 law school seats which should be Trinity resulting in more options for all students.

Further, denying approval would not enhance access to law schools for LGBTQ students. In contrast, the decision not to approve the law school would have a severe impact on Trinity Western University's rights.

The qualification of students graduating from Trinity law program would not be recognized and graduates would not be able to apply to practice law in BC.

The practical effect of non-approval is that Trinity cannot operate law school and cannot therefore exercise fundamental religion, religious and associative rights that would otherwise be guaranteed under section 2 of the charter.

Now, this is the heart of it. In a diverse and pluralistic society, government regulatory approval of anti-Swiss differing beliefs is a reflection of state neutrality.

[41 : 39] It is not an endorsement of a group's beliefs. The law society's decision not to approve Trinity's law school is unreasonable because it limits the heart to freedom of religion in a disproportionate way, significantly more than is reasonably necessary to meet the law society's public interest objectives.

So that is as clear as you can make it. And like the Nova Scotia ruling of Justice Jamie Campbell, it is a stinging indictment of the, one can only call it the bigotry of law societies in attempting to proscribe the law faculty proposed by Trinity Western University.

So this indeed was a cause for great celebration not only for Trinity but I think for all faith communities in Canada in the endorsement of religious and associative freedoms and rights for religious communities in Canada.

So I've got several conclusions here. We've got a couple of minutes and I certainly want to leave some time for discussion. Now I've, what I've just said is the heart of what I want to conclude.

The, as with the case of the Nova Scotia court, so with the case of the British Columbia Court of Appeal, courts have endorsed and affirmed pretty much the whole spectrum of arguments made by Trinity Western University and its council and its array of supportive institutions.

[43 : 32] And indeed, there are more than half a dozen religious, mostly Christian groupings and lobbyists like the Evangelical Fellowship of Canada, like the Catholic Archbishop of Vancouver, Archbishop of Vancouver, and an array of religious study groups and lobby groups that have come and stood beside Trinity Western at the highest level of legal counsel and argumentation.

So that is very, very impressive too, and that is absolutely essential in Canada. Support these groups. Join the Evangelical Fellowship of Canada. Support CARDIS and these types of groups because this is where we're at, and if we don't defend rights and freedoms of Christians and other faith communities in Canada, we will lose out.

Now, let me just say a couple of things. Yes, there's much to applaud in these rulings, but there are still, I would say, causes for concern.

Now, here we can open for discussion. I am concerned as to what is going to happen in the Supreme Court. The fact that they did not say, and maybe some of the lawyers here can help me out on this, but the signal here is the fact they did not say that no, the 2001 ruling that we gave is so similar to what's entailed in this particular case that we do not entertain then, leave to appeal, but consider that ruling as determinative.

That's the legal expression that would be used here. They have opened this can again, and they're going to address it.

[45 : 43] Now, some of the rulings, since I last spoke here, on matters like this, in the Supreme Court of Canada, have gone very positively for religious communities.

In Montreal, the Supreme Court ruled that the government could not impose on Catholic schools. It was Loyola School, an ethics and cultural program that had to be taught from a secularist point of view.

Loyola had appealed for exemption and to teach a similar program, but within a confessional Catholic framework. Supreme Court of Canada, it got finally to the Supreme Court of Canada, said, no, this cannot be imposed on a confessional school.

They have their religious freedom rights. Okay, so that was important. Another important Supreme Court case was when in Saguenay, Quebec, all these things that seem to be happening in Quebec, where the long tradition was in their city council that you started off the proceedings with the mayor leading a prayer, usually the Lord's prayer, and that would be the beginning of things.

[47 : 12] Well, someone on council who was offended by this, an atheist, as he made it clear, objected that this violated, discriminated against his freedom of conscience, and violated his rights, and therefore that this was discriminatory and had to be ended.

Now, this is a big, big case, because across Canada, as you well know, the tradition in many public institutions, including all the schools, in the public schools when I was growing up in Manitoba, was that you would have this type of a prayer at the beginning of the day's procedures.

And so, right up to the House of Commons, where it still happens, as a session begins, as the day begins, and as an official part of the record, all members are required to stand while some type of prayer, usually a pretty ecumenical prayer now, is read.

Now, the Supreme Court of Canada has said, across Canada, whether at provincial levels, municipal levels, that this is illegal and unconstitutional.

But they have done it, arguing that this has to happen on the basis of strict neutrality. This, of course, is going to, I think, impact on what will happen in the Supreme Court of Canada on Trinity Western.

[48 : 48] Let us hope and pray that the arguments that have been mobilized very articulated powerfully by the courts of appeal, and not least in B.C. then, where it was unanimous.

The five justices were unanimous in this, and that counts for an awful lot. And so also in Nova Scotia. Let us hope that these arguments, in defense of fundamental rights of religious freedom and association, that these will prevail.

In any event, I'll probably get invited back for a sixth presentation. Anyway, thank you then. That's what I want to say. So anybody with questions, let's hear them now in the time we have left.

guess. This has been really enlightening, you know, the way you have gone through the historical background of this. I'm confused a little bit about the behavior of the school relating to a gay or lesbian, etc., etc.

LB, I don't ever get the letters right, sorry. Anyway, their community being excluded from studying law there. But a greater concern would be to me that if you have developed a culture in which you say these behaviors are wrong, wrong, wrong, and you must sign a statement to that effect, and they move into a court situation where total objectivity is to be practiced, how can somebody who has grown up and been educated in a culture that said these behaviors are wrong, and it's been reinforced by making them sign things, and so on, how can you expect total objectivity from that person once they're employed as a lawyer or a judge?

[50 : 55] I think that's not possible. Well, exactly, and that's, I think, at the core of the problems of strict neutrality. Now, let's say a couple of things here first. that this, as all of these appeals that have come down on Trinity Western's side, and as Trinity Western Council admits, this covenant does violate in the public sphere the rights and freedoms of the LGBTQ community.

It does, rights, and it offends them, and they are understandably mobilized against this. On the other hand, Trinity Western University has its rights to religious freedom.

So here, how do you be objective, how do you be neutral when these rights collide? Now, what the Nova Scotia courts have said, what the BC Courts of Appeal have said is, yes, this is a question where rights are in conflict.

And in that, they go back then to case law and the procedures of trying to be objective and neutral in sorting out what is the best kind of compromise which can be reached.

And here, the indictment has been against those supporting or those who have attempted to proscribe Trinity Western's law faculty, the various law societies, and their supporters, in not attempting reasonably to balance these competing rights but relying exclusively on Section 15 and privileging that section over Section 2.

[52 : 51] And everybody that was involved in the drafting of the Charter of Rights and Freedoms refused to put a hierarchy on I think there are five or so sections of fundamental freedoms and rights that are at the core of Canada's jurisprudence and democracy.

There is not a hierarchy here. So balancing compromise objectivity can you count on this? And indeed that's what I was saying in talking about conclusions here.

There is uncertainty as to where the Supreme Court is going to go. On the Loyola case it was 4-3 and Beverly McLaughlin Chief Justice was in the minority there.

On the other hand I've heard her speak this would be about 10 years or so ago at McGill where I attended a conference and she was the featured speaker and she addressed the question of freedom of religion in charter jurisprudence and it seemed to me quite reassuring that she was fully appraised of all of this and that this would be given its due place in case law ahead.

So let us hope and pray that what she said then still prevails but I wouldn't count completely on it. Yes? Is it not reasonable as an analogy to the last question to say that there's no such thing as a mutual or objective or a good criminal defense law?

[54 : 30] Well there are a lot convicted criminals who still have the legal rights to counsel them.

Yeah. My answer to that is you know there are a lot worse procedures than the quest for objectivity and neutrality.

I mean dictatorships where the judiciary is under the thumb of the leadership and all the rest of it. Canada has I think rightly a very honorable tradition and history of jurisprudence and so you know I hope the lawyers do a good job and the justices do a good job in this.

They're trying to do this but this is at the heart of public life in Canada now where we have gone through these transformations and it may not be possible that we have certainly a majority that defends religious freedoms but then it is the responsibility of the judiciary to protect religious minorities.

We are a religious minority now in Canada and that's the key thing in terms of protections. Can we be protected by the law and it's uncertain.

It's uncertain. Yes. Thanks for your presentation. Two questions that are related. One first is the Justice Department or Ministry under Stephen Harper's government was submitting some briefs in favor of Trinity Western at the lower courts.

[56 : 11] That practice has stopped under the Trudeau government. Is there any indication from the government now as to why that's the case, why the government has changed its position on this matter?

The second question is related to that. As I understand it, this is an education matter meaning it's under the purview of the provinces if and when the law school gets approved.

Do we have any indication that a government wouldn't necessarily grant a charter to the law school? I know the BC liberals did and then once this went through the courts they said, well we're going to wait until this happens.

If we elect a progressive government this may fit that charter and not see renewal. Okay. On the first question, the Harper government's interventions related to the questions of jurisdiction. whether provincial or federal. And they argued that the Nova Scotia, if I remember correctly, Bar Association did not have the legal right to make rulings or indeed proscriptions in another province.

[57 : 19] So the Trudeau government has backed off from that and I guess are strictly neutral on this right now. Now the second question, refresh me on that one now, on, oh yes, the government of BC.

The Minister of Advanced Education has reversed himself again, or herself, whoever it is right now. and so they indeed will grant accreditation if it proceeds now through to the Supreme Court.

But, you know... What about the... Should there be a change in the government and the province? Oh, if... Who can tell? Again, here is where politics, the question of objectivity, bias, neutrality, I would surmise that the Liberal government, if it is re-elected, will be happy to affirm a charter for

Trinity law faculty.

If the NDP is elected, I think the LGBT community will express tremendous outrage if the government were to... They may just leave it.

If the... You know, it's already given affirmation by the Ministry of Advanced Education. It'll cause a tremendous outrage all over the place if the Supreme Court affirms it and the BC government didn't try to prescribe it under, say, an NDP government.

[58 : 59] But I don't have a political speech to make comment. No, I just wanted to know what the... Okay, I just... Okay. Let me start with a couple of different ideas or different approaches to it.

That one of the elements is elements that are not really strictly religious, but they're there. And what we have is essentially the governments and the law society being hypocrites.

Because they're involved all very different places. And all the other actors as individuals are hypocrites as well.

Because they're a mixture of things going on all the time. First of all, the covenant or the prescription of good behavior, bad behavior, goes back to an old idea which is still around, but we don't call it the same thing and we don't address the same issues anymore.

Codes of conduct. Codes of conduct. I have brought the one for UBC. Okay. Yes. Well, I'm thinking of a principle called in loco parentis. Okay.

[60 : 18] In the place of the parents. Yes. And if you go back to 1960, the universities had a lot of loco parentis. They had deans of women and deans of men.

And they had a lot to say about how students behave. Yes. They don't have the same roles anymore. Except for certain things. They can all work up about very particular issues.

Yes. But not whether you're sleeping with somebody anymore. Yeah. What you see is that on your last point there, Trudeau wanted to get the state out of the bedrooms of the nation.

Okay. What happened was the state is in every corner of every bedroom and every room in the house and everything else back with all types of extremely excruciatingly difficult jurisprudence as to what is abusive behavior.

The media, the Globe and Mail, of course, is full of this every day. Where is the state? You know, what is the court to do? How do you proceed in these tremendous conflicts when a consensus on morality and culture that underlies law in old Canada has been destroyed?

[61 : 38] So what's going to replace it? Okay. Let me go with a different idea now. If you look at other law schools, not in Canada but in the United States, that have their own covenant or rule here, and there are some, and they, by and large, all law schools have their rule.

Yes. law school will say, if you misbehave in the law school as a student, the law school will almost certainly inform the state bar association when they do something by judging the moral character of the applicant to be licensed in the state.

and that's a separate thing from taking the bar exam, which is a three-day written exam. It's a slightly different process than what you do in Canada.

Yeah. Now, but more importantly, more particularly, there are schools that do have their own very explicit covenants. Yes.

They're not that unlike people in the United West. Two examples. One is the University of Notre Dame in South Bend, Indiana, which is a very prominent, important Roman Catholic church, and the other which is prominent is Brigham Young University in Salt Lake City, which is the LDS or Mormon University.

[63 : 08] Well, that's very interesting, but unfortunately, I can hear the last hymn being sung, and I'm going to ask to leave that discussion to the two of you after the session has closed. Let me just say that the council for the Trinity Western is fully opposed to the American examples of excellence in confessionally-based law schools, and they shoved this right through their eyes.

Absolutely. Excellent. All right. Well, clearly, a very interesting topic for many of us, and I just want to take this last moment to thank you so much for doing such a brilliant job of clarifying and taking us through an logical, and yes, you are invited back to the session after the Supreme Court meets, and I also appreciate your encouragement to pray, because this doesn't impact all of us in the future, and you have done this in just such a lovely, lovely, clear way for us.

Thank you so much. Thank you. Thank you. Thank you. Thank you. Thank you. Thank you. Thank you. Thank you. But, thank you.

Thank you. Thank you. Thank you. Thank you. Thank you. Thank you. Thank you. Thank you.

Thank you. Thank you.